IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GROVER HAROLD PHILLIPS,

Appellant,

v.

DUNNAHOO AND ASSOCIATES LEASING,

Appellee.

Case No. 91-C-809-E

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

Now before the Court is Defendant's Motion to Dismiss. Oral arguments took place February 6, 1992 before this court. For the reasons listed below, Defendant's Motion to Dismiss is DENIED.

The Defendant, Dunnahoo and Associates Leasing, contends that Plaintiff, Grover H. Phillips, did not file his notice of appeal to this Court until more than ten days after the entry of the order dismissing his claims against Defendant. A trial was held in the Bankruptcy Court on August 26, 1991, and a judgment dismissing Plaintiff's claims was entered August 27, 1991. Plaintiff filed his notice of appeal on September 18, 1991.

Rule 8002(a) of the Bankruptcy Rules states as follows:

> (a) Ten-Day Period. The notice of appeal shall be filed with the clerk within 10 days of the date of the entry of the judgment, order, or decrees appealed from. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 10 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires. A notice of appeal filed after the announcement of a decision or order but before entry of judgment, order or decree shall be treated as filed after such entry and on the day thereof. If a notice of appeal is mistakenly filed with the district court or the bankruptcy appellate panel, the clerk of the district court or the clerk of the bankruptcy appellate panel shall note thereon the date on which it was received and transmit it to the clerk and it shall be deemed filed with the clerk on the date so noted.

Rule 8002(a), in essence, provides that a notice of appeal shall be filed with the clerk within 10 days from the date of the entry of the judgment, order, or decree appealed from.

Section 8002.03, Collier on Bankruptcy, states . . . "Entry" of a judgment occurs when it is "set forth in a written document separate from the court's opinion . . . and when the substance of this separate document is reflected in an appropriate notation on the docket sheet assigned to the action." See also, Caperton v. Beatrice Pocohontas Coal Co., 585 F.2d 683,688 (4th Cir. 1978).

Defendant premises his Motion to Dismiss argument on the fact that Plaintiff, having filed his Notice of Intent to Appeal on September 18, 1991, he is outside the 10-day period. Defendant is computing the 10-day period from August 27, 1991, the date the clerk entered the court's conclusion on the civil docket sheet, rather than from September 19, 1991, the date the written Journal Entry of Judgment was filed with the U.S. Bankruptcy Court Clerk.

The Bankruptcy Court announced its decision on August 26, 1991. Defendant's attorney was directed by the court to prepare a Journal Entry of Judgment within 15 days to memorialize the court's decision in writing. This Journal Entry of Judgment was filed of record on September 19, 1991. Plaintiff's Notice of Intent to Appeal was filed on September 18, 1991, one day prior to the Journal Entry.[1]

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[1] *In the case of In re Stuerke, 61 B.R. 623 (9th Cir.BAP 1986), under identical facts, the Court held:*

> *"The notice of appeal was filed in this case is premature. It was filed seven days before the order appealed from was entered. The Ninth Circuit Court of Appeals in interpreting former Bankruptcy Rule 802 found that a premature notice of appeal was valid. Matter of the Brickyard, 735 F.2d 1154, 1156 (9th Cir.1984). Former Bankruptcy Rule 802 does not differ significantly from Bankruptcy Rule 8002. When the validity of an appeal is challenged not because something was done too late, but rather because it was done too soon, the policy of the Ninth Circuit is to prevent the loss of the right to appeal. [Case cites omitted] We, therefore, hold that this premature notice of appeal is valid and timely filed."*

It is clear that Plaintiff's Notice of Intent to Appeal to this Court was timely filed on September 18, 1991. Therefore, Defendant's Motion to Dismiss is DENIED.

SO ORDERED THIS 25th day of February, 1992.

JAMES O. ELLISON, CHIEF JUDGE
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JACQUELINE GORDON and GEORGE GORDON,

Plaintiffs,

vs.

CITY OF TULSA, et al.,

Defendants.

No. 91-C-124-E

O R D E R

This matter is before the Court on various Motions to Dismiss, to-wit:

1. Defendant Mark MacKenzie, the investigating Tulsa police officer in this case, and the City of Tulsa move for dismissal of the claims against them on the grounds, first, that Defendant Mark MacKenzie is entitled to good faith immunity from civil liability because a reasonable police officer could have believed that probable cause existed in support of an arrest warrant application. Having considered the uncontested facts in the record in light of the relevant law, the Court concurs. Malley v. Briggs, 106 S.Ct. 1092 (1986); Anderson v. Creighton, 107 S.Ct. 3034 (1987). Further, because Officer MacKenzie did not violate any constitutional or federal statutory right of Plaintiffs, no claim against the City in that regard is actionable. City of Los Angeles v. Heller, 106 S.Ct. 1571 (1986). The Court finds that Plaintiffs have

failed to state a claim upon which relief against these two Defendants may be granted; therefore the claims against them must be dismissed. Rule 12(b)(6) Fed.R.Civ.P.

2. Defendant Margaret Stripling, the attending physician during Plaintiff Jacqueline Gordon's second incarceration at issue herein, urges that she is also entitled to dismissal of the claims against her.

Specifically, she argues, first, insufficiency of process pursuant to Rule 4 and Rule 12(b)(5) Fed.R.Civ.P. The Court finds that the doctor did receive actual notice and the manner of service was not prejudicial to her. Gordon v. Hunt, 116 FRD 313 (S.D.N.Y. 1987); see also, Datskow v. Teledyne, Inc., 899 F.2d 1298 (2nd Cir. 1990). The Court declines to dismiss the claims on the grounds of a defect in method of service. The doctor then argues that the broad allegations in Plaintiffs' Complaint fail to state a claim against her. The Court notes that some latitude must be afforded pro se complainants in civil rights suits and, further, finds that the Complaint, though expansive, does state legal claims upon which relief may be granted. Therefore, the case against Defendant Stripling should not be dismissed on this ground. Dr. Stripling next argues that she was serving as an independent contractor and, thus, not acting under color of state law. The Court finds the analysis of the

Fourth Circuit in Calvert persuasive on the issue; therefore the doctor's Motion will be granted because she cannot be said to have acted under color of state law. Calvert v. Sharp, 748 F.2d 861 (4th Cir. 1984). Because the decision on this issue is dispositive, the Court need not consider Proposition IV that her medical treatment was not violative of the Eighth Amendment.

Finally, the Court does not find that Dr. Stripling's argument was frivolous or made in bad faith; therefore Plaintiff's Motion for Rule 11 Sanctions should be denied.

So ORDERED this 27th day of February, 1992.

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

28

UNITED STATES OF AMERICA, Plaintiff, vs. ALEXANDER WILLIAM THERMOS, Defendant.	)	Civil Action No. 92-C-73-B

NOTICE OF DISMISSAL

COMES NOW the United States of America by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Kathleen Bliss Adams, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice, as requested by the agency, Health and Human Services.

Dated this 28th day of February, 1992.

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney

KATHLEEN BLISS ADAMS, OBA #13625
Assistant United States Attorney
3600 United States Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 28th day of February, 1992, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Alexander W. Thermos, 857 S. Vangordon Ct., #H103, Lakewood, CO 80228.

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RESOLUTION TRUST CORPORATION, CONSERVATOR FOR STANDARD FEDERAL SAVINGS AND LOAN ASSOICATION,

Plaintiff

v.

CASE NO. 89-C-878-E

ALEXANDER J. STONE; PROFESSIONAL INVESTORS INSURANCE GROUP, INC., A DELAWARE CORPORATION; PROGRESSIVE ACCEPTANCE CORPORATION, AN OKLAHOMA CORPORATION; UNION PLANTERS INVESTMENT BANKERS CORPORATION, A TENNESSEE CORPORATION; UNION PLANTERS INVESTMENT BANKERS GROUP, INC., A TENNESSEE CORPORATION; INVESTMENT GROUP MORTGAGE CORPORATION, A TENNESSEE CORPORATION; UNION PLANTERS CORPORATION; A TENNESSEE CORPORATION; AND UNION PLANTERS NATIONAL BANK,

Defendants.

ORDER DENYING MOTIONS

The Court, having considered certain of the post-trial motions in this case, memorializes its rulings at the status conference on January 29, 1992, that the following motions are denied:

1. Plaintiff's motion to amend the judgment to provide for pre-judgment interest filed June 21, 1991;

2. Professional Investors Insurance Group, Inc.'s motion for judgment notwithstanding the verdict filed June 14, 1991;

3. Professional Investors Insurance Group, Inc.'s motion for new trial filed June 20, 1991;

4. Motion of Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc., and Investment Group Mortgage Corporation for judgment notwithstanding the verdict and for new trial filed June 21, 1991;

5. Union Planters Defendants' motion for sanctions filed June 10, 1991; and

6. Plaintiff's motion for sanctions filed January 24, 1992, with respect to the motion of the Union Planters Defendants for leave to file an amended answer and counterclaim.

So ORDERED this 28TH day of February, 1992.

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 28 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CALEB C. SMITH, et al.,

Plaintiffs,

vs.

ANCHOR STONE CO., INC., et al.,

Defendants.

No. 86-C-979-E

O R D E R

The Court has for consideration the Rule 50(b) Motion of Plaintiffs for Judgment as a Matter of Law (docket #783). The Court does not take Plaintiffs' view of the weight of the evidence. The Court does not find that the evidence conclusively favored Plaintiffs' case, consequently the jury verdict in this case will not be set aside. See Thompson v. Kerr McGee, 660 F.2d 1380 (10th Cir. 1980).

IT IS THEREFORE ORDERED that Plaintiffs' Rule 50(b) Motion is denied; and therefore Plaintiffs' Application for postponement of hearing on Dolese Bill of Costs is also denied.

So ORDERED this 28th day of February, 1992.

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. SHIRLEY D. MITCHELL; JAMES EMERY MITCHELL; COUNTY TREASURER, Tulsa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, Defendants.	)	FILED 1992 Clerk CIVIL ACTION NO. 90-C-931-E

DEFICIENCY JUDGMENT

This matter comes on for consideration this 28 day of February, 1992, upon the Motion of the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, for leave to enter a Deficiency Judgment. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, and the Defendants, Shirley D. Mitchell and James Emery Mitchell, appear neither in person nor by counsel.

The Court being fully advised and having examined the court file finds that a copy of Plaintiff's Motion was mailed to Shirley D. Mitchell and James Emery Mitchell, 4130 South 24th West Avenue, Tulsa, Oklahoma 74107, and all counsel and parties of record.

The Court further finds that the amount of the Judgment rendered on May 23, 1991, in favor of the Plaintiff United States of America, and against the Defendants, Shirley D. Mitchell and

James Emery Mitchell, with interest and costs to date of sale is $23,931.45.

The Court further finds that the appraised value of the real property at the time of sale was $21,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered May 23, 1991, for the sum of $18,860.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on the 3rd day of January, 1992.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, Shirley D. Mitchell and James Emery Mitchell, as follows:

Principal Balance as of 5/23/91	$18,677.93
Interest	3,384.42
Late Charges to Date of Judgment	150.96
Appraisal by Agency	300.00
Management Broker Fees to Date of Sale	240.00
Abstracting	475.00
1990 Taxes	330.00
Publication Fees of Notice of Sale	148.14
Court Appraisers' Fees	225.00
TOTAL	$23,931.45
Less Credit of Appraised Value -	21,000.00
DEFICIENCY	$ 2,931.45

plus interest on said deficiency judgment at the legal rate of _____ percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendants, Shirley D. Mitchell and James Emery Mitchell, a deficiency judgment in the amount of $2,931.45, plus interest at the legal rate of 4.21 percent per annum on said deficiency judgment from date of judgment until paid.

JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney

KATHLEEN BLISS ADAMS, OBA #13625
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

KBA/css

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

REUBEN L. THOMAS,

Plaintiff,

V.

DON HALL, et al.,

Defendants.

No. 89-C-792-E

FILED

FEB 28 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

NOW on this 27th day of February 1992, comes on for hearing the above captioned matter and the Court, being fully advised in the premises finds that the Motion of Plaintiff to Alter or Amend and Brief in support fails to demonstrate any error in the Court's Order, entered April 9, 1991, which grants Defendants' Motion to Dismiss the case.

IT IS THEREFORE ORDERED, that the Motion to Alter of Amend should be and is hereby denied.

CHIEF JUDGE JAMES O. ELLISON
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. ROBERT WALKER SHARP; COUNTY TREASURER, Tulsa County, Oklahoma; BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma; and LINDA DALE SHARP, Defendants.	)	CIVIL ACTION NO. 90-C-215-E

FILED

DEFICIENCY JUDGMENT

This matter comes on for consideration this 28 day of February, 1992, upon the Motion of the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, for leave to enter a Deficiency Judgment. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, and Defendant, Robert Walker Sharp, appears neither in person nor by counsel.

The Court being fully advised and having examined the court file finds that a copy of Plaintiff's Motion was mailed to Robert Walker Sharp, 6280 Lake View TRL #102, Memphis, Tennessee 38115-3470, and M. Allen Core, Attorney for Robert Walker Sharp, 2700 East 51st Street, Suite 220, Tulsa, Oklahoma 74105, and all other counsel and parties of record.

The Court further finds that the amount of the Judgment rendered on June 18, 1991, in favor of the Plaintiff United

States of America, and against the Defendant, Robert Walker Sharp, with interest and costs to date of sale is $23,321.19.

The Court further finds that the appraised value of the real property at the time of sale was $9,500.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered June 18, 1991, for the sum of $8,532.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on the 3rd day of January, 1992.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendant, Robert Walker Sharp, as follows:

Principal Balance as of 6/18/91	$16,342.41
Interest	4,393.98
Late Charges to Date of Judgment	240.64
Appraisal by Agency	300.00
Management Broker Fees to Date of Sale	766.40
Abstracting	350.00
1989 Taxes	262.00
1990 Taxes	290.00
Publication Fees of Notice of Sale	150.76
Court Appraisers' Fees	225.00
TOTAL	$23,321.19
Less Credit of Appraised Value -	9,500.00
DEFICIENCY	$13,821.19

plus interest on said deficiency judgment at the legal rate of _____ percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendant, Robert Walker Sharp, a deficiency judgment in the amount of $13,821.19, plus interest at the legal rate of 4.21 percent per annum on said deficiency judgment from date of judgment until paid.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney

KATHLEEN BLISS ADAMS, OBA #13625
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

KBA/css

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

QUARLES DRILLING CO.

Plaintiff,

v.

UNDERWRITERS AT INTEREST, LLOYDS, LONDON, SUBSCRIBING TO POLICY NUMBER CV6 5510 00,

Defendant.

No. 91-C-386-E

ORDER AND JUDGMENT

This is an action by Quarles Drilling Corporation ("Quarles") against Underwriters at Interest, Lloyds, London, subscribing to Policy No. CV6 5510 00 ("Lloyds"), wherein Quarles asserts Lloyds breached its insuring agreement with Quarles.

Quarles entered a turn-key drilling contract with the Santa Fe Energy Operating Partners, L.P., (Santa Fe) on November 7, 1986. Santa Fe agreed to pay Quarles $1,942,500.00 for producing a completed well. In late January 1987, a down-hole blowout occurred at a time when the well had been drilled only to a depth of 14,419 feet. Thereafter a dispute ensued between Quarles and Santa Fe concerning who was responsible for the consequences of the blowout in view of the fact that Santa Fe had taken over operations of the well to run certain electric logs.

Both Quarles and Santa Fe sought damages for breach of contract against one another. Judge Harmon in the U.S. District Court for the Southern District of Texas, in Houston, granted Santa Fe's motion for summary judgment. The court held that "Quarles'

25

unjustified refusal to resume turn-key operations on the well released Santa Fe from any duty of further performance under the turn-key form and made Quarles liable to Santa Fe for failing to reach the objective depth [of 16,500 feet]." In other words, Judge Harmon found that Quarles was liable for breaching the turn-key contract and therefore responsible for damages to the extent required in order to place "the non-breaching party in the same position as it would have been had the contract been performed." Western Plains Service v. Ponderosa Development, 769 F.2d 654, 657 (10th Cir. 1985).

On May 23, 1991, Santa Fe and Quarles entered a Mutual Release and Compromise of Litigation Agreement, pursuant to which Santa Fe received $2,134,132.80 for which it released, acquitted and forever discharged Quarles for the relief and causes of action sought in the Texas lawsuit. Lloyds as Quarles insurer paid in full the above amount.

In the case at bar the dispute is as to whether the amount Lloyds actually paid was lower than it should have been because it required Quarles to forgo a claim it had against Santa Fe for the price of the turn-key contract. Quarles is actually claiming entitlement to a sum that it would have recovered had it fulfilled its obligations under the terms of the drilling contract.

This Court finds that Quarles could not have had any claim to the turn-key contract price. "The law is well settled that a party to a contract cannot claim its benefits where he is the first to violate its terms." Ponderosa Development, 769 F.2d at 657.

Quarles has already been found, by Judge Harmon, in breach of contract and liable to Santa Fe for the damages resulting from the breach. And Lloyds was contractually obligated to indemnify Santa Fe for these damages.

Beyond that, the court finds that Quarles has no claim against Lloyds because the existing Insurance Agreement did not cover the loss of profits or income that Quarles was hoping to earn on the drilling of the well. Quarles cannot receive remuneration for a contract it has not performed, and we cannot hold Lloyds responsible for a loss that Quarles could have avoided by not following Lloyds' advise to breach the contract when the blowout occurred. Had Quarles performed the contract, it would have received the contract price, and Lloyds would have paid for all the damages that occurred in between; leaving thus Quarles in an ostensibly better position. But the courts cannot indemnify parties for making the wrong business decision. Like any other risk, Quarles could have insured itself against such a prospect but did not.

IT IS THEREFORE ORDERED that Defendant's motion for Summary Judgment is granted and Plaintiff's motion for Summary Judgment is denied.

ORDERED this 25th day of February 1992.

CHIEF JUDGE JAMES O. ELLISON
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE CORPORATION, in its corporate capacity, Plaintiff, vs. RELL SCHWAB, III; ERIC SCHWAB; TOTAL SERVICE, INC., an Oklahoma Corporation; WELL LOGGING, INC., an Oklahoma Corporation; C.G. DELOZIER; FLORENCE SCHWAB; RELL SCHWAB, JR.; and INDIVIDUAL DOES 1-10, inclusive, Defendants.	)	No. 90-C-953-B

FILED

FEB 27 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT

STIPULATION OF DISMISSAL AS TO
DEFENDANT, C. G. DELOZIER

Come now the parties, by their respective counsel of record, and pursuant to Rule 41A, Federal Rules of Civil Procedure, hereby stipulate that the cause of action asserted by Plaintiff against Defendant, C. G. DELOZIER, be and is hereby dismissed, without prejudice

Dated the 20th day of ~~December~~ February, 1992.

James R. Branum
JAMES BRANUM
Attorney for Plaintiff

JOHN B. JARBOE
Attorney for Defendants
Rell Schwab, Jr., ~~Total~~ Service, Inc. and Well Logging, Inc.

James E. Poe
JAMES E. POE
Attorney for Defendant
C.G. DeLozier

James E. Poe

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

J AND S LAND AND CATTLE COMPANY, CHARLES A. SHERMAN AND JOYCE SHERMAN

Plaintiffs,

vs.

CHARLES L. STINSON, d/b/a HORSE CAVE STOCKYARDS AND d/b/a E AND L CATTLE COMPANY,

Defendant,

vs.

CHARLES A. SHERMAN,

Third-Party Defendant.

Case No. 91-C-575-C

ENTRY OF JUDGMENT

Upon consideration of Defendant's Motion for Summary Judgment and Plaintiffs' lack of opposition and after reviewing the pleadings, and the entire record of this case, this Court finds and concludes that there is no genuine issue as to any material fact with respect to J and S Land and Cattle Company and Joyce Sherman's claim against Defendant. This Court has determined there is no just reason to delay this Entry of Judgment as Defendant is entitled to Judgment as a matter of law. It is

ORDERED that the Motion be hereby granted; and it is further

ORDERED, ADJUDGED AND DECREED THAT judgment is entered for the Defendant, Charles L. Stinson and against Plaintiffs, J and S Land and Cattle Company and Joyce Sherman, and that Defendant should be awarded the amount of $8,705.27 with

interest thereon at the rate of 4.21 % per year from Feb 27, 1992 and costs of this action.

DATED this 27th day of Feb., 1992.

JUDGE OF THE DISTRICT COURT

CERTIFICATE OF MAILING

I hereby certify that on the ____ day of February, 1992, a true and correct copy of the above and foregoing was mailed, properly addressed and postage fully prepaid to:

John Thomas Hall
Attorney at Law
3242 East 30th Place, Suite B
Tulsa, Oklahoma 74114-5831

IN THE UNITED STATES DISTRICT COURT FOR

THE NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE CORPORATION, in its corporate capacity as successor in interest of the now insolvent Union Bank an Trust Company, Bartlesville, Oklahoma,	)	
Plaintiff,	)	
vs.	)	91-C-795-C
GREG ALAN MACKIE, et al.,	)	
Defendants.	)	

JUDGMENT BY DEFAULT UPON APPLICATION TO THE COURT

The above-entitled and numbered cause comes before the Court upon Application of Federal Deposit Insurance Corporation, in its corporate capacity, [hereinafter referred to in is corporate capacity as "FDIC"] Plaintiff, for Default Judgment. Rule 55(b)(2), Federal Rules of Civil Procedure.

The Court finds that:

1. On October 8, 1991, this cause was instituted by the filing of FDIC's Complaint.

2. Dean Lee and Barbara Lee, individually, and doing business as Lee's Repair Shop, Defendants, were served by certified mail on November 24, 1991; Return of Service filed December 5, 1991. Neither Dean Lee nor Barbara Lee have answered or otherwise defended; neither of the said Defendants has appeared in this action.

3. On February 7, 1992, default was entered by the Clerk against Dean Lee and Barbara Lee, doing business as Lee's Repair Shop, Defendants.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that any claim of right, title, lien, estate, encumbrance, assessment or interest of Dean Lee and Barbara Lee, doing business as Lee's Repair Shop, Defendants, be and hereby is declared to be subject, junior, subsequent and subordinate to the mortgage lien in favor of FDIC; and that FDIC's title in and to the following described real estate and premises, to-wit:

> Lot One (1), Block Four (4), and Lots Two (2), Three (3) and Four (4), in Block Five (5) in OSAGE VIEW ADDITION, Osage County, Oklahoma, according to the recorded plat thereof

be and hereby is quieted against the said Defendants and each of them.

DATED this 27 day of February, 1992.

UNITED STATES DISTRICT JUDGE

Prepared by:

John Paul Johnson/OBA 4700
P. O. Box 26208
Oklahoma City, OK 73126
(405) 841-4341
ATTORNEY FOR FDIC

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAMES DAVID WHEELER, and ELSA J. TOVAR,

Plaintiffs,

vs.

OSTEOPATHIC HOSPITAL FOUNDERS ASSOCIATION, an Oklahoma corporation, d/b/a TULSA REGIONAL MEDICAL CENTER, TULSA OSTEOPATHIC EMERGENCY PHYSICIANS, INC., an Oklahoma corporation, CHRISTINE ARENTZ, D.O., individually, WILLIAM R. HOLCOMB, D.O., d/b/a NORTHEAST OKLAHOMA PROCTOLOGY CLINIC, and WILLIAM R. HOLCOMB, D.O., individually,

Defendants.

Case No. 91 C 397 B

FILED

FEB 27 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JOINT STIPULATION TO DISMISS WITHOUT PREJUDICE

COME NOW the parties herein and make joint stipulation to the Court to dismiss the above-entitled cause of action without prejudice, pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedures.

WHEREFORE, the parties respectfully request that the above-caption case be dismissed without prejudice.

By _____
Matt A. Melone, Attorney for Plaintiffs

By _____
Scott B. Wood, Attorney for Defendant, Tulsa Regional Medical Center

By _____
William A. Fiasco, Attorney for Defendants, Tulsa Osteopathic Emergency Physicians, Inc., and Christine Arentz, D.O.

By _____
James E. Secrest, II, Attorney for William R. Holcomb and William R. Holcomb d/b/a Northeast Oklahoma Proctology Clinic

lkm F:\WP\91619\STIPULAT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PHILLIP LEE HULL, a minor, by his natural parents, guardians and personal representatives, PHILLIP GENE HULL AND TANYA LEE HULL, husband and wife, and PHILLIP GENE HULL, Individually, and TANYA LEE HULL, Individually,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 88-C-1645-E

O R D E R

This matter is before the Court on Plaintiffs' Applications for costs and expenses. Defendant has objected to certain entries in the Application. First, Defendant objects to allowance of expert witness fees in excess of the amounts authorized by 28 U.S.C. §1821. The Court notes, however, that in this case, the Defendant conceded liability; therefore the case was litigated solely on the issues of damages. These issues were highly technical and it was imperative that the Court avail itself of the medical expertise rendered by the witnesses in order to make a determination on the damage issues. The Court acknowledges that prior Court approval of expert witness fees is the preferred approach; nevertheless, the Court finds that in this case the expert witness testimony was essential. Therefore, the Court will allow recovery of $63,060.14 for expert witness fees in excess of

§1821 amounts, pursuant to Coleman v. Omaha, 714 F.2d 804, 809 (8th Cir. 1983) in addition to the §1821 amounts of $2,344.31.

The court has reviewed the remaining objections of the Defendant to Plaintiffs' Applications in light of applicable law and agrees that those entries should be denied. Specifically, recovery for costs and expenses incurred for depositions including reporter expenses, transcript costs and attorney's travel expenses will be denied as will expenses for exemplification and copies and medical services.

So ORDERED this 27th day of February, 1992.

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 27 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

HOMEWARD BOUND, INC., et al.,

Plaintiffs,

vs.

HISSOM MEMORIAL CENTER, et al.,

Defendants.

No. 85-C-437-E

JUDGMENT

In accordance with the Order entered on the 25th day of Feb, 1992, the Court hereby enters judgment in favor of Plaintiffs' counsel, Bullock and Bullock, and against Defendant Department of Human Services in the amount of $42,252.50. Plaintiffs' right to an enhancement of these fees shall be held in abeyance until the matter of plaintiffs' rights to enhancement is resolved.

ENTERED this 26th day of Feb, 1992.

S/ JAMES O. ELLISON

JAMES O. ELLISON
United States District Court

APPROVED AS TO FORM:

Louis W. Bullock
Patricia W. Bullock
BULLOCK & BULLOCK
320 South Boston, Suite 718
Tulsa, Oklahoma 74103
(918) 584-2001

ATTORNEYS FOR PLAINTIFFS

Charles Lee Waters
John Harris
General Counsel
DEPARTMENT OF HUMAN SERVICES
P.O. Box 53025
Oklahoma City, OK 73152-3025
(405) 521-3638

ATTORNEY FOR DEFENDANT,
DEPARTMENT OF HUMAN SERVICES

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 90-CR-91-C
	)	
JOSHUA ALAN AVEN,	)	No. 91-C-844-C
	)	
Defendant.	)	

O R D E R

By Order of January 22, 1992, the Court permitted a response to be filed by Federal Public Defender Stephen Greubel as to petitioner's motion pursuant to 28 U.S.C. § 2255. The Court read the motion to state that Mr. Greubel may have declined to file an appeal on petitioner's behalf. Mr. Greubel has responded, stating that such is not the case. Petitioner has likewise filed a response to the Order, essentially supporting Mr. Greubel's version of events. The office of the United States Attorney was also given the opportunity to respond, but has not done so.

Accordingly, what is before the Court are petitioner's assertions that he timely presented a letter to personnel of the Tulsa County Jail, with instructions to mail said letter to the office of the Court Clerk for this district. A copy of a letter is attached to the petition, which letter requests that the Court Clerk prepare his notice of appeal. Petitioner contends that he only recently learned that no notice of appeal was filed in his case. Clearly, the initial ten-day period and the possible thirty-day extension under Rule 4(b) of the Federal Rules of Appellate Procedure have long since passed. Generally, compliance with the

rule is mandatory. *See,* Fennell v. United States, 339 F.2d 920 (10th Cir.), *cert. denied*, 382 U.S. 852 (1965). However, in Houston v. Lack, 487 U.S. 266 (1988), the Supreme Court held that a prisoner's notice of appeal is "filed" when it is given to prison authorities for mailing to the district court. Here, petitioner alleges that he submitted his letter to jail authorities and that no delivery was made. He does not allege that he merely deposited the letter in a prison mailbox, which action, according to United States v. Leonard, 937 F.2d 494 (10th Cir. 1991), falls outside the Houston rule. Therefore, the Court will grant the motion based upon the present record.

It is the Order of the Court that the motion of petitioner pursuant to 28 U.S.C. § 2255 is hereby granted. Petitioner is granted fifteen days from the date of this Order in which to formally file a notice of appeal.

IT IS SO ORDERED this 27th day of February, 1992.

H. DALE COOK
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE CORPORATION, in its corporate capacity, Plaintiff, v. RELL SCHWAB, III, ERIC SCHWAB, TOTAL SERVICE INC., an Oklahoma Corporation, WELL LOGGING, INC., an Oklahoma Corporation, C. G. DELOZIER, FLORENCE SCHWAB, RELL SCHWAB, JR. and INDIVIDUAL DOES 1-10, inclusive, Defendants.	}	No. 90-C-953-B

FILED

FEB 27 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DISMISSAL WITHOUT PREJUDICE

Plaintiff dismisses without prejudice its action as to C. G. Delozier only. Plaintiff will proceed with action against all other defendants.

James Branum, Attorney
BRANUM LAW OFFICES
Box 1296 * Newcastle, OK 73065
405 / 387 - 9888

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE CORPORATION, in its corporate capacity, Plaintiff, v. RELL SCHWAB, III, ERIC SCHWAB, TOTAL SERVICE INC., an Oklahoma Corporation, WELL LOGGING, INC., an Oklahoma Corporation, C. G. DELOZIER, FLORENCE SCHWAB, RELL SCHWAB, JR. and INDIVIDUAL DOES 1-10, inclusive, Defendants.	}	No. 90-C-953-B

CERTIFICATE OF MAILING

I hereby affirm that on this 14th day of February, 1992, a true, correct and complete copy of the foregoing *Dismissal Without Prejudice* was mailed by prepaid first class mail to the following:

John B. Jarboe, Esq.
1810 Mid-Continent Tower
Tulsa, OK 74103

James E. Poe
Suite 740, Grantson Building
111 West Fifth
Tulsa, OK 74103

James Branum

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

DAVID BRYAN and MARY JUDITH EAKIN, individually and as husband and wife,	)	
Plaintiffs,	)	
vs.	)	Case No. 90-C-552-B
BLUE CROSS AND BLUE SHIELD OF OKLAHOMA, an Oklahoma corporation, individually and as Administrators of Health Insurance Coverage for TEFCO LITHOGRAPHERS, INC.	)	

ADMINISTRATIVE CLOSING ORDER

The Parties having entered into a settlement agreement, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, by 6-24-92, the Parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 26th day of February, 1992.

UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

27

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DAVID A. WHITE, Plaintiff, vs. THE UNIVERSITY OF TULSA - COLLEGE OF LAW, THE UNIVERSITY OF TULSA; PROFESSORS CHAPMAN, HAGER, LIMAS, TANAKA, CLARK, ADAMS; and SHEILA POWERS, Defendants.	)	Case No. 90-C-421-B

FILED
FEB 26 1992
Richard M. Lawrence
U.S. District Court Clerk

ORDER AND JUDGMENT

WHEREAS this action came on before the Court for jury trial on February 24, 1992; the Defendants announced present and ready for trial and the Plaintiff appeared not,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this action be dismissed with prejudice, pursuant to Fed. Rule Civ. Pro. 41(b), by reason of the Plaintiff's failure to appear and prosecute this action.

DATED THIS 26th day of February, 1992.

Thomas R. Brett
District Judge
United States District Court for
the Northern District of Oklahoma

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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

STATE FEDERAL SAVINGS ASSOCIATION, by and through its Conservator, Resolution Trust Corporation, as successor in interest to certain assets of State Federal Savings and Loan Association,

Plaintiff,

vs.

JOHN G. ARNOLD, JR.; ARNOLD ENTERPRISES, INC., an Oklahoma corporation; DESIGN PROPERTIES, INC., an Oklahoma corporation; JOHN CANTRELL, Treasurer, Tulsa County, Oklahoma; BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma; SOONER FEDERAL SAVINGS ASSOCIATION, by and through its Receiver, Resolution Trust Corporation; FIRST GIBRALTAR BANK, F.S.B., SAN ANTONIO; STEVEN M. HARRIS; and EVELYN M. HARRIS;

Defendants.

Case No. 90-C-808-B

AGREED JOURNAL ENTRY OF JUDGMENT

This cause came on for consideration by the Court on the Motion for Summary Judgment of the Plaintiff, State Federal Savings Association, by and through its Receiver, Resolution Trust Corporation ("RTC"), as against the Defendants in this action on a promissory note and for foreclosure of all interests in the securing real property, with the exception of any unpaid real estate ad valorem taxes, and for reformation of conveyancing instruments. The Court also considered the Motion of Defendants Steven M. Harris and Evelyn M. Harris for Summary Judgment, as well, upon the parties' agreement to submit the matter to the Court for a decision upon the stipulated facts.

B

The Court, upon due consideration of the briefs submitted by the parties, the pleadings of record, the exhibits thereto, and stipulated facts, and the applicable law, the issues having been duly tried and a decision duly rendered, as set forth in the Order filed herein on February 6, 1992.

IT IS ORDERED, ADJUDGED, AND DECREED that judgment in personam in favor of State Federal Savings Association, by and through its Receiver, Resolution Trust Corporation, be hereby entered as against Defendant John G. Arnold, Jr. in the amount of $64,000.00, plus interest accrued through July 17, 1990, in the sum of $7,595.12, with interest accruing from and after July 17, 1990, until date of judgment at the rate of $21.04 per diem, plus costs and expenses, any real estate ad valorem taxes advanced, and a reasonable attorney fee, the amount of which will be determined upon consideration of an application for same filed within twenty (20) days of the filing date of this Judgment, with interest on the above sums at the statutory rate until paid, all of which constitutes a lien on the real property described below until fully discharged.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the property description contained in Plaintiff's mortgage, that certain Real Estate Mortgage with Power of Sale given by Defendant John G. Arnold, Jr., an individual, to State Federal Savings and Loan Association, recorded in the Office of the County Clerk of Tulsa County on July 21, 1989, in Book 5196, at Page 874, and in those certain deeds of John G. Arnold, Jr., being the General Warranty Deed from Design Properties, Inc. to John G. Arnold, Jr. and Margot R. Arnold, husband and wife, recorded in the Office of

the County Clerk of Tulsa County on February 4, 1986, at Book 4922, Page 2027; and the Quit Claim Deed from Margot R. Arnold to John G. Arnold, Jr., recorded in the Office of the County Clerk of Tulsa County on April 19, 1988, at Book 5094, Page 245, be hereby reformed, said reformation relating back to the respective dates of these Deeds and mortgage, to read as follows:

> A part of Lot Five (5), Block Three (3), SHERRELWOOD, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof, more particularly described as follows:
>
> BEGINNING at the northwest corner of said Lot 5; Thence easterly along the southerly line of 69th Street and around a curve to the left having a radius of 1107.96 feet for a distance of 25.03 feet to a point of tangency; Thence easterly for a distance of 30.01 feet to a point of curvature; Thence around a curve to the right having a radius of 165 feet for a distance of 184.20 feet to a point of tangency; Thence continuing southeasterly along the southerly line of 69th Street and the northerly line of said Lot 5 for a distance of 59.74 feet; Thence to a point on the westerly line of said Lot 5; Thence N 5°58'11" W along the westerly line of said Lot 5 for a distance of 202.59 feet to the northwest corner thereof and the Point of Beginning, a/k/a 2638 East 69th Street, Tulsa, Oklahoma 74136.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the property described in Defendant First Gibraltar Bank's mortgage and substitution and transfer agreement, that certain Real Estate Mortgage Real Estate Mortgage from Max A. Heidenreich and Kathleen H. Heidenreich to Sooner Federal Savings and Loan, recorded in the Office of the County Clerk of Tulsa County, Oklahoma, on March 9, 1983, in Book 4674, at Page 1753, which was the subject of that certain Substitution and Transfer Agreement, dated April 5, 1985, among Sooner Federal Savings and Loan Association, Max A. Heidenreich and Kathleen H. Heidenreich, husband and wife, and Defendants Steven M. Harris and Evelyn M. Harris, husband and wife,

be hereby reformed, said reformation relating back to the date of this mortgage, to read as follows:

> Lot Seven (7), Block One (1), SOUTH OAKS, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof;
>
> AND
>
> A part of Lot Five (5), Block Three (3), SHERREL-WOOD, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof; being more particularly described as follows, to-wit: BEGINNING at the southwest corner of said Lot 5; Thence along the south line of said Lot 5, for a distance of 285 feet to the southeast corner thereof; Thence along the easterly line of said Lot 5 for a distance of 76.70 feet to the northeast corner thereof; Thence westerly along the southerly line of 69th Street and around a curve to the right having a radius of 115 feet for a distance of 69.88 feet to a point of tangency; Thence to a point on the westerly line of said Lot 5; Thence S 5°58'11" E along the westerly line of said Lot 5 for a distance of 20 feet to the southwest corner thereof and the Point of Beginning, a/k/a 7002 South Birmingham Court, Tulsa, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the property described in that certain deed of Defendants Steven M. Harris and Evelyn M. Harris, being the General Warranty Deed from Max A. Heidenreich and Kathleen H. Heidenreich, husband and wife, to Steven M. Harris and Evelyn M. Harris, husband and wife, recorded in the Office of the County Clerk of Tulsa County, Oklahoma, on April 1, 1985, at Book 4853, Page 49, and rerecorded as corrected on July 28, 1987, at Book 5041, Page 2425, be hereby reformed, said reformation relating back to the date of this General Warranty Deed, to read as follows:

> Lot Seven (7), Block One (1), SOUTH OAKS, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof;
>
> AND

A part of Lot Five (5), Block Three (3), SHERREL-WOOD, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof; being more particularly described as follows, to-wit: BEGINNING at the southwest corner of said Lot 5; Thence along the south line of said Lot 5, for a distance of 285 feet to the southeast corner thereof; Thence along the easterly line of said Lot 5 for a distance of 76.70 feet to the northeast corner thereof; Thence westerly along the southerly line of 69th Street and around a curve to the right having a radius of 115 feet for a distance of 69.88 feet to a point of tangency; Thence to a point on the westerly line of said Lot 5; Thence S 5°58'11" E along the westerly line of said Lot 5 for a distance of 20 feet to the southwest corner thereof and the Point of Beginning.

This tract is restricted from being transferred or conveyed as above described without including:

A portion of Lot 8, Block 1, SOUTH OAKS, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, described as follows: Beginning at the Northeast corner of said Lot 8; thence Northwest along the North line of Lot 8 a distance of 135.48' to the Northwest corner of Lot 8; thence Southerly along the West line of Lot 8 a distance of 6.61'; thence Southeasterly a distance of 132.31' to the POINT OF BEGINNING,

Unless the Tulsa Metropolitan Area Planning Commission, or its successors, according to law, approves such conveyance or transfer.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment in rem be hereby entered as against Defendants John G. Arnold, Jr.; Arnold Enterprises, Inc., an Oklahoma corporation; Design Properties, Inc., an Oklahoma corporation; John Cantrell, Treasurer, Tulsa County, Oklahoma; Board of County Commissioners, Tulsa County, Oklahoma; Sooner Federal Savings Association, by and through its Receiver, Resolution Trust Corporation; First Gibraltar Bank, F. S. B., San Antonio; Steven M. Harris; and Evelyn M. Harris, as RTC's mortgage interest, in and to the Property described as follows:

A part of Lot Five (5), Block Three (3), SHERRELWOOD, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof, more particularly described as follows:

BEGINNING at the northwest corner of said Lot 5; Thence easterly along the southerly line of 69th Street and around a curve to the left having a radius of 1107.96 feet for a distance of 25.03 feet to a point of tangency; Thence easterly for a distance of 30.01 feet to a point of curvature; Thence around a curve to the right having a radius of 165 feet for a distance of 184.20 feet to a point of tangency; Thence continuing southeasterly along the southerly line of 69th Street and the northerly line of said Lot 5 for a distance of 59.74 feet; Thence to a point on the westerly line of said Lot 5; Thence N 5°58'11" W along the westerly line of said Lot 5 for a distance of 202.59 feet to the northwest corner thereof and the Point of Beginning, a/k/a 2638 East 69th Street, Tulsa, Oklahoma 74136

is a first, prior, valid and enforceable lien upon that Property securing RTC's judgment. Any and all right, title, and or interest of the Defendants named herein in and to the Property is junior, inferior and subordinate to the lien and interests of RTC, except as to unpaid real estate ad valorem taxes.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of Defendant John G. Arnold, Jr. to satisfy the lien described above, and upon submission by Plaintiff to the Clerk of this Court of a Special Writ of Execution and Order of Sale to be issued by the Clerk, the Sheriff of Tulsa County, State of Oklahoma, shall levy upon the Property, by advertising and selling, as upon execution, the Property, with appraisement, with the proceeds therefrom being applied first to expenses of sale, and next to reduction of the indebtedness due and owing to Plaintiff by virtue of the judgment herein, with the balance, if any remaining, to be paid into Court subject to further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants herein and all persons claiming under them from and after the filing of this action be thereupon barred, restrained, and enjoined from having or asserting any right, title, or interest or other right of redemption in and to the Property and that a Writ of Assistance shall issue upon request of the purchaser to the Sheriff, who shall place the purchaser in full and complete possession and enjoyment of the Property.

SO ENTERED this 26th day of February, 1992.

Thomas R. Brett, Judge
United States District Court
for the Northern District of
Oklahoma

APPROVED: Journal Entry of Judgment, Case No. 90-C-808-B, In the United States District Court for the Northern District of Oklahoma

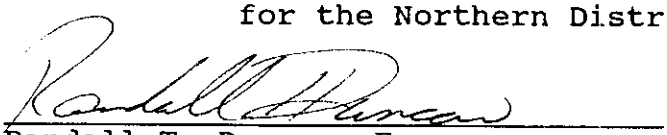
Leslie Zieren, Esq. OBA No. 9999
BOESCHE, McDERMOTT & ESKRIDGE
800 ONEOK Plaza, 100 W. 5th St.
Tulsa, Oklahoma 74103

COUNSEL FOR PLAINTIFF

APPROVED: Journal Entry of Judgment, Case No. 90-C-808-B, In the United States District Court for the Northern District of Oklahoma

Kenneth M. Smith
Robinson, Orbison, Smith & Coyle
Box 1046
Tulsa, OK 74101

APPROVED: Journal Entry of Judgment, Case No. 90-C-808-B, In the United States District Court for the Northern District of Oklahoma



Randall T. Duncan, Esq.
Doyle & Harris
P. O. Box 1679
Tulsa, OK 74101

APPROVED: Journal Entry of Judgment, Case No. 90-C-808-B, In the United States District Court for the Northern District of Oklahoma

Jeffrey R. Schoborg
Hall, Estill, Hardwick, Gable,
Golden & Nelson, P.C.
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, OK 74172

IN THE UNITED STATES DISTRICT COURT FOR

THE NORTHERN DISTRICT OF OKLAHOMA

BERNICE WOODALL, Plaintiff,	)	
vs.	)	Case No. 91-C-283-E
STATE OF OKLAHOMA, ex rel., DEPARTMENT OF MENTAL HEALTH And EASTERN STATE HOSPITAL, Defendants.	)	

STIPULATION OF DISMISSAL

Come now the Plaintiff, Bernice Woodall, through her counsel Steven Hickman, and the Defendant, Department of Mental Health, through its counsel, Assistant Attorney General Sue Wycoff, and hereby stipulate to the dismissal of this action.

The parties have reached a settlement of all claims to the mutual satisfaction of both and do hereby agree to dismiss this action in full and with prejudice, each party to bear its own costs.

Respectfully submitted,

SUSAN B. LOVING
ATTORNEY GENERAL OF OKLAHOMA

SUE WYCOFF
ASSISTANT ATTORNEY GENERAL
DEPUTY CHIEF FEDERAL & TORT DIVISION
420 W. Main, Suite 550
Oklahoma City, OK 73102
(405) 521-4274

ATTORNEYS FOR DEFENDANTS
DEPARTMENT OF MENTAL HEALTH

STEVEN R. HICKMAN
1700 Southwest Blvd., Suite 100
P. O. Box 799
Tulsa, OK 74101
(918) 584-4724

ATTORNEY FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROBERT J. HUNTLEY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 90-C-799-E
	)	
SAND SPRINGS RAILWAY COMPANY,	)	
	)	
Defendant.	)	

ORDER OF DISMISSAL WITH PREJUDICE

The Court, having before it the written Stipulation for Dismissal with Prejudice signed by all parties to this litigation, finds that based upon the agreement of the parties this case should be dismissed with prejudice to refiling in the future.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the litigation captioned herein, including all complaints, counterclaims, cross-complaints and causes of action of any type by any party, should be and the same are hereby dismissed with prejudice to refiling in the future. This Judgment is entered this 25 day of Feb, 1992.

S/ JAMES O. ELLISON

JAMES O. ELLISON
Judge of the U.S. District Court

JAD/bjo/581-6
orddis

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CECELIA M. BAILEY,)
)
Plaintiff,)
)
v.) 91-C-156-B
)
SAND SPRINGS GROUP HOMES, INCORPORATED,)
)
Defendant.)

ORDER

This order pertains to Defendant's Motion for Attorney Fees and Costs (Docket #25)[1] and Plaintiff's Response to Defendant's Motion for Attorney Fees and Costs (Docket #27). Defendant's Motion for Summary Judgment (Docket #11) has been granted by the Magistrate Judge (Docket #23) and is now on appeal to the District Court (Docket #29).

In the United States, a prevailing party is not entitled, absent statutory authority and with limited common law exceptions, to collect attorney fees from the losing party. Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240 (1975). This case was initiated under the Fair Labor Standards Act, 29 U.S.C. § 216. Defendant argues that 29 U.S.C. § 216(b) provides the necessary statutory authority in this case.[2] This statute

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[1] "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

[2] The referenced statute reads, in part:

> (b) Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages . . . . The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action . . . .
>
> 29 U.S.C. § 216(b)

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40 2-27

mandates the award of attorney fees to a prevailing plaintiff. Defendant makes the bald assertion, without supporting authority, that this should apply equally to prevailing defendants. There is no merit to this claim.

In the absence of statutory authority to support such an award, Defendant's Motion for Attorney Fees and Costs is denied.

Dated this 26th day of February, 1992.

JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

BILLY J. WILLIAMS,

Plaintiff,

vs.

LOUIS W. SULLIVAN, M.D., SECRETARY OF HEALTH AND HUMAN SERVICES,

Defendant.

CASE NO. 91-C-300-B

ORDER

Upon the motion of the defendant, Secretary of Health and Human Services, by Tony M. Graham, United States Attorney of the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, to which there is no objection, it is hereby **ORDERED** that this case be remanded to the Secretary for further development of the record and so that specific findings of fact can be made.

DATED this 26th day of Feb, 1992.

UNITED STATES MAGISTRATE JUDGE

SUBMITTED BY:

TONY M. GRAHAM
United States Attorney

KATHLEEN BLISS ADAMS, OBA #13625
Assistant United States Attorney

~~EXHIBIT B~~

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MOBIL OIL CORPORATION, Plaintiff, v. LINEAR FILMS, INC., Defendant.	Civil Action No. 90-C-947B Hon. Thomas R. Brett

CONSENT DECREE AND PERMANENT INJUNCTION

This case having come on before this Court upon the pleadings, and other proceedings heretofore had in this action and it being represented to the Court that plaintiff Mobil Oil Corporation (hereinafter referred to as "MOBIL") and defendant Linear Films Inc. (hereinafter "LINEAR") have settled their differences with respect to the matters in dispute, and upon the consent of these parties, their attorneys, and for good cause having been shown

IT IS HEREBY ORDERED, ADJUDICATED AND DECREED:

1. That this Court has jurisdiction over the subject matter of this action and has personal jurisdiction of each of the parties hereto.

2. That venue is proper in this judicial

district.

3. That Plaintiff MOBIL is a corporation duly organized and existing under the laws of the State of New York with its principal place of business at 3225 Gallows Road, Fairfax, Virginia.

4. That Defendant LINEAR is a corporation organized and existing under the laws of the State of Oklahoma with its principal place of business at 4920 South 48th West Avenue, Tulsa, Oklahoma.

5. That Plaintiff, MOBIL, is the owner of the entire right, title and interest in United States Patent No. 4,518,654, the patent-in-suit.

6. That Defendant, LINEAR, admits that U.S. Patent No. 4,518,654 is valid and enforceable and has been infringed by Linear.

7. That MOBIL's trade secrets are valid.

8. That Defendant, LINEAR, its officers, servants and employees, and all other persons acting in active concert or participation with LINEAR, who receive actual notice of this Consent Decree by personal service, or otherwise, and each of them, individually, be and the same

hereby are permanently restrained and permanently enjoined from infringing Plaintiff's U.S. Patent No. 4,518,654.

9. That each party shall bear its own costs.

10. That MOBIL's complaint and Amended Complaint and LINEAR's counterclaim and defenses are dismissed with prejudice. However, jurisdiction is retained by this Court for the purpose of enforcing compliance with the terms or provisions herein and enabling the parties to apply to this Court at any any time for further orders.

11. This Judgement is made FINAL.

IT IS SO ORDERED.

DATED: Feb. 26th

Thomas R. Brett

U.S. DISTRICT COURT JUDGE
THOMAS R. BRETT

APPROVED AS TO FORM AND SUBSTANCE:

MOBIL OIL CORPORATION

BY: _____
R. A. Dobies
Assistant Controller
Mobil Oil Corporation

_____
Douglas W. Wyatt
Thomas A. O'Rourke
WYATT, GERBER, BURKE
& BADIE
645 Madison Avenue
New York, New York 10022
(212) 826-0171

_____
Richard McGonigle
Hall, Estill, Hardwick,
Gable, Golden & Nelson
4100 Bank of Oklahoma Tower
Bldg.
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

ATTORNEYS FOR MOBIL OIL
CORPORATION

LINEAR FILMS, INC.

BY: _____
TITLE President and C.E.O.

_____
Charles H. De La Garza
Mark V. Seeley
ARNOLD, WHITE & DURKEE
P.O. Box 4433
Houston, Texas 77210
(713) 787-1400

_____
Gene C. Buzzard
Patrick O. Waddel
GABLE & GOTWALS
2000 Fourth National Bank

15 West 6th Street
Tulsa, Oklahoma 74119-1217
(918) 582-9201

ATTORNEYS FOR LINEAR FILMS,
INC.

tao74/18

~~EXHIBIT A~~

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LINEAR FILMS OF OKLAHOMA, INC., Plaintiff, v. MOBIL OIL CORPORATION, Defendant.	Civil Action No. 87-C-874B Hon. Thomas R. Brett

CONSENT DECREE AND PERMANENT INJUNCTION

This case having come on before this court upon the pleadings, and other proceedings heretofore had in this action and it being represented to the court that plaintiff Linear Films of Oklahoma Inc. (now Linear Films, Inc., and hereinafter referred to as "LINEAR") and defendant Mobil Oil Corporation (hereinafter "MOBIL") have settled their differences with respect to the matters in dispute, and upon the consent of these parties, their attorneys, and for good cause having been shown

IT IS HEREBY ORDERED, ADJUDICATED AND DECREED:

1. That this court has jurisdiction over the subject matter of this action and has personal jurisdiction of each of the parties hereto.

2. That venue is proper in this judicial district.

3. That Plaintiff LINEAR is a corporation organized and existing under the laws of the State of Oklahoma with its principal place of business at 4920 South 48th West Avenue, Tulsa, Oklahoma.

4. That Defendant MOBIL is a corporation duly organized and existing under the laws of the State of New York with its principal place of business at 3225 Gallows Road, Fairfax, Virginia.

5. That Defendant, MOBIL, is the owner of the entire right, title and interest in United States Patent Nos. 4,399,180 and 4,418,114, the patents in suit.

6. That Plaintiff, LINEAR, admits that U.S. Patent Nos. 4,399,180; and 4,418,114 are valid, enforceable and have been infringed by LINEAR.

7. That Plaintiff, LINEAR, its officers, agents, servants and employees, and all other persons acting in active concert or participation with LINEAR, who receive actual notice of this Consent Decree by personal service, or otherwise, and each of them, individually, be and the same hereby are permanently restrained and permanently enjoined

from infringing Defendant's Patent Nos. 4,399,180 and 4,418,114 unless licensed by MOBIL.

8. That each party shall bear its own costs.

9. LINEAR's complaint and MOBIL's counterclaims are dismissed with prejudice. However, jurisdiction is retained by this Court for the purpose of enforcing compliance with the terms and provisions of this Consent Decree and enabling the parties to apply to this Court at any time for further orders in accordance with this Consent Decree.

10. That this Judgement is made FINAL.

IT IS SO ORDERED.

DATED: 3-26-92

U.S. DISTRICT COURT JUDGE
THOMAS R. BRETT

APPROVED AS TO FORM AND SUBSTANCE:

MOBIL OIL CORPORATION

By: _____
R. A. Dobies
Assistant Controller
Mobil Oil Corporation

_____
Douglas W. Wyatt
Thomas A. O'Rourke
WYATT, GERBER, BURKE
& BADIE
645 Madison Avenue
New York, New York 10022
(212) 826-0171

_____
Richard McGonigle
Hall, Estill, Hardwick,
Gable, Golden & Nelson
4100 Bank of Oklahoma Tower
Bldg.
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

ATTORNEYS FOR MOBIL OIL
CORPORATION

LINEAR FILMS, INC.

By: _____
TITLE President and C.E.O.

_____
Charles H. De La Garza
Mark V. Seeley
ARNOLD, WHITE & DURKEE
P.O. Box 4433
Houston, Texas 77210
(713) 787-1400

_____
Gene C. Buzzard
Patrick O. Waddel
GABLE & GOTWALS
2000 Fourth National Bank

15 West 6th Street
Tulsa, Oklahoma 74119-1217
(918) 582-9201

ATTORNEYS FOR LINEAR FILMS,
INC.

TAO74/18/kh

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

LINDA J. MOORE,
Plaintiff,

v.

OKLAHOMA STATE INDUSTRIES, et al.,
Defendants.

No. 91-C-581-E

O R D E R

The Court has before it for consideration Defendants' Motion to Dismiss. After perusal of the file, the pleadings and the applicable law concerning the issue, the Court finds that the Plaintiff's complaint is timely filed but does not allege any facts at all, that amount to sex discrimination. A plaintiff bringing a discriminatory employment case must do more that parrot the statute.

IT IS THEREFORE ORDERED that Defendants Motion to Dismiss for failure to state a claim, pursuant to Rule 12(B)(6) of the Federal Rules of Civil Procedure, is granted; the case is dismissed without prejudice and the Plaintiff is given thirty (30) days within which to file an amended complaint .

SO ORDERED on the 28th day of February 1992.

CHIEF JUDGE JAMES O. ELLISON
UNITED STATES DISTRICT COURT

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

EDDIE DEAN COATS,

Plaintiff,

vs.

STEVE HARGETT,

Defendant.

No. 92-C-68-E

FILED

FEB 26 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

O R D E R

This action, included among the group of cases considered by this Court pursuant to Harris v. Champion, 938 F.2d 1062 (10th Cir. 1991), was initially filed in the Western District of Oklahoma and assigned case No. CIV-92-145. The United States District Court for the Western District of Oklahoma transferred the action to this district. The order of transfer has now been vacated and the action remains within the Western District but is assigned to the undersigned. Accordingly, the case No. 92-C-68 need not remain open in the Northern District.

It is the order of the Court that Case No. 92-C-68 in the Northern District of Oklahoma be administratively closed. The action shall proceed under CIV-92-145 in the United States District Court for the Western District of Oklahoma.

IT IS SO ORDERED this 26th day of February, 1992.

H. DALE COOK
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CAN-AM INTERNATIONAL, INC., a Virginia corporation,

Plaintiff,

vs.

FIRST PRESIDENTIAL CORPORATION, a Texas corporation, TULSA INTERCONTINENTAL JET, INC., an Oklahoma corporation, ROBERT KIDD, a/k/a BOB KIDD, an individual, and DECKER AVIATION, INC., a Tennessee corporation; and CORPORATE AVIATION SERVICES, INC., an Oklahoma corporation,

Defendants.

No. 91-C-68-B

ORDER SUSTAINING MOTIONS FOR SUMMARY JUDGMENT

The Motions for Summary Judgment of Defendants, Decker Aviation, Inc. ("Decker") and First Presidential Corporation ("FP"), are before the Court for decision in this action regarding purchase by Plaintiff, Can-Am International, Inc. ("Can-Am") of a Mitsubishi MU2 airplane. Plaintiff, Can-Am, alleges the Defendant, Decker, breached its written brokerage contract in failing to provide an airplane that was operational and airworthy. Can-Am alleges the Defendant, FP, misrepresented material facts, was guilty of fraud, and breached its warranty in reference to the subject airplane owned and sold by the Defendant, FP.[1] FP also moves to dismiss Plaintiff's action.

[1]Plaintiff, Can-Am, settled with the Defendants, Tulsa Intercontinental Jet, Inc. and Robert Kidd, by selling them the subject aircraft for $246,000.00, for which Can-Am had initially paid $222,500.00 and then had approximately $30,000.00 in repairs.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Windon Third Oil & Gas v. FDIC, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

> "The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

Local Rule 15B states in pertinent part:

> "Summary Judgment Motions. A brief in support of a motion for summary judgment (or partial summary judgment) shall begin with a section that contains a concise statement of material facts as to which movant contends no genuine issue exists. The facts shall be numbered and shall refer with particularity to those portions of the record upon which movant relies. The brief in opposition to a motion for summary judgment (or partial summary judgment) shall begin with a section which contains a concise statement of material facts as to which the party contends a genuine issue exists. Each fact in dispute shall be numbered, shall refer with particularity to those portions of the record upon which the opposing party relies, and, if applicable,

> shall state the number of the movant's fact that is disputed. All material facts set forth in the statement of the movant shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the statement of the opposing party...."[2] (emphasis supplied)

The Court finds the following material facts to not be in dispute, both because the record references sustain such a conclusion, and Plaintiff's failure to comply with Local Rule 15B:

1. The written brokerage agreement between Can-Am and Decker (DX-A) establishes a brokerage relationship. At the Court's hearing on February 11, 1992 it was conceded by all parties, Can-Am, Decker and FP that Decker was simply a broker and had no authority to act as agent on behalf of any party herein.[3]

2. Robert C. Decker, as president, acted for and on behalf of the broker, Decker Aviation, Inc. Mike Firetti, as the owner of Can-Am, and his son, Sam Firetti, were agents of and acted on behalf of Can-Am in this transaction.

3. Decker was contacted by Can-Am originally through its

---

[2]The purpose of Local Rule 15B is to require the parties to direct the Court to relevant parts of the record (depositions, affidavits, interrogatories, admissions and documentary exhibits) that establish the absence or presence of material factual issues pursuant to Fed.R.Civ.P. 56. When the parties fail to comply with Local Rule 15B, the Court is left to glean from a lengthy record (as herein), the somewhat "needle in a haystack" search for the presence or absence of disputed factual issues.

[3]Plaintiff, Can-Am, has settled with the Defendants, Tulsa International Jet, Inc. and Bob Kidd, by selling them the subject Mitsubishi MU2 aircraft for $246,000.00, after having made approximately $30,000.00 of repairs thereon, for which Can-Am initially paid $222,500.00. The action proceeds against the Defendants FP and Decker.

representative, Mike Firetti, to locate a Mitsubishi MU2 aircraft within certain price limitations.

4. At no time relevant to this litigation did Decker have control of or access to the subject aircraft or its related records such as log books, maintenance schedules and so forth. (Mike Firetti Depo. p. 50).

5. Can-Am as purchaser, actually purchased the aircraft, which Decker had located, from FP as seller.

6. The written brokerage agreement between Can-Am and Decker dated March 23, 1990 was the full agreement between the parties and had attached thereto a specification sheet, Exhibit A.

7. The brokerage agreement does not require Decker to be responsible for securing any prepurchase inspection on the subject aircraft. (See Ex. A; Sam Firetti Depo. pp. 37-38; Mike Firetti Depo. p. 367).

8. Can-Am knew the identity of First Presidential as owner/seller, prior to the purchase of the subject aircraft. (Sam Firetti Depo. p. 52; Mike Firetti Depo. pp. 29-30).

9. Can-Am representatives knew Decker had not conducted any inspection of the aircraft or log books when the specification sheet attached to Exhibit A was forwarded. (Sam Firetti Depo. p. 53).

10. The scope of Decker's responsibility under the brokerage agreement (DX-A) is that which is stated therein and also provides "ALL SPECIFICATIONS SUBJECT TO VERIFICATION UPON INSPECTION." (See also, Mike Firetti Depo. p. 139).

11. The specification sheet attached to the purchase agreement provided for (1) no damage history, (2) that the aircraft was being currently operated on part 135 regulations, (3) and various avionics, equipment and time on such equipment. (See attached Ex. A).

12. The purchase agreement (brokerage agreement) provided that all systems would be operational and airworthy at paragraph 8, and that compliance with all airworthiness directives and mandatory service bulletins would also have been completed at the time of purchase at paragraph 7 in the purchase agreement.

13. One of the primary concerns of the purchaser, Can-Am, was that the aircraft would not have any damage history. (Mike Firetti Depo. p. 29).

14. If in fact the subject aircraft would have had damage history, Can-Am would simply go to the next airplane for consideration. (See Mike Firetti Depo. p. 30).

15. Decker did not know the subject aircraft had damage history prior to Decker actually locating the physical damage history in the log books at the time of his appearance in Tulsa shortly before and on the day of closing. (Mike Firetti Depo. p. 106).

16. Can-Am was aware that the aircraft had significant damage history before Can-Am representatives accepted the aircraft and left Tulsa. (Mike Firetti Depo. p. 222).

17. After discovery of the damage history while in Tulsa, Can-Am representatives made no further effort at inspection of the

subject aircraft although it could have done so had it desired. (Mike Firetti Depo. pp. 362, 379).

18. That Decker was acting in good faith and that he was not aware, prior to the date of closing, there was damage history to the aircraft, and that there was no evidence that Decker was acting untruthfully. (Sam Firetti Depo. p. 119).

19. After having discovered the aircraft had damage history, Decker advised Plaintiff, Can-Am, representatives to not purchase the subject aircraft. (Sam Firetti Depo. p. 126; Mike Firetti Depo. p. 212).

20. After discovery of the damage history, and at the request of Sam Firetti as agent on behalf of the Plaintiff, Can-Am, Decker called the seller representative seeking a price reduction, as also did Mike Firetti. (Mike Firetti Depo. p. 206, 196-198, 201, and 207). The seller, FP, refused to reduce the price any further and confirmed the sale price was $222,500.00. Can-Am decided to continue with the purchase and closing of the subject aircraft.

21. The seller, FP, after discovery was made of the damage history of the aircraft, offered to return any monies paid by the purchaser, Can-Am. At the time this offer was made by FP, the final purchase proceeds being forwarded by Can-Am had not yet been wired to FP.

22. Can-Am's representative construed the specification sheet language "ALL SPECIFICATIONS ARE SUBJECT TO VERIFICATION UPON INSPECTION" to say, "That means that you better check it out."

23. Can-Am's own pilot representative and Tulsa

Intercontinental Jet, Inc., were to perform the prepurchase inspection on behalf of Can-Am. (Mike Firetti Depo. pp. 74, 113-114).

24. Decker traveled to Tulsa on the date of closing, March 26, 1990, in order to bring with him the down payment of the purchase proceeds necessary for the consummation of the sale which was the earlier deposit he had received from Can-Am.

25. Nothing in the purchase agreement required Decker to arrange for prepurchase inspection, but Decker did advise and encourage Can-Am to secure one. (Mike Firetti Depo. pp. 373-374; Sam Firetti Depo. pp. 37-38).

26. Can-Am was fully aware at all material times that the subject aircraft was over twenty years old, and that Can-Am was looking for a used airplane because of the substantial price differential. (Mike Firetti Depo. pp. 67, 347; Sam Firetti Depo. p. 26).

27. Can-Am's representative, Mike Firetti, admits that the seller, FP, was also unaware of any damage history to the airplane until such time as it was brought to his attention on the date of closing, March 26, 1990. (Mike Firetti Depo. p. 203).

28. Decker's net brokerage commission was approximately $3,000.00 after expenses.

29. Sam Firetti admitted that there were no direct representations by First Presidential Corporation to anyone at Can-Am International prior to March 27, 1990, the day following the closing. (Sam Firetti Depo. p. 158).

30. FP made no false representations to Plaintiff (Affidavit of Ashton) that the airplane was in fact on a part 135 maintenance schedule and the airplane was sold on an "as is" basis. (Affidavit of Ashton).

Thus, the record reflects the following:

Can-Am wanted to buy a used Mitsubishi MU2 airplane that was airworthy and free of damage. On the day of closing, March 26, 1990, the broker, Decker, and Can-Am learned for the first time that the subject MU2 had a record of significant prior damage. At that time Decker advised Can-Am not to buy the airplane. Previous to the delivery of the balance of the purchase price, Can-Am chose to try to get the seller, FP, to reduce the $222,500.00 purchase price, but FP refused. The seller, FP, also offered to return any purchase money to Can-Am if Can-Am did not desire to complete the purchase of the subject aircraft for the $222,500.00 purchase price. Can-Am elected to proceed with the airplane purchase knowing of the prior damage, and against the advice of the broker, Decker. Can-Am understood the language on the spec sheet ... "ALL SPECIFICATIONS ARE SUBJECT TO VERIFICATION UPON INSPECTION" meant "You better check it out." (DX-A attached) (Mike Firetti Depo. pp. 50-51; Sam Firetti Depo. p. 54). Although the purchase agreement (DX-A) provides a prepurchase inspection is to be performed at Tulsa Intercontinental Jet, Inc. in Tulsa, Oklahoma at buyer's expense, Can-Am paid for no such inspection. (Mike Firetti Depo. pp. 50-51, 113-114; Sam Firetti Depo. p. 54). The only contact between Can-Am and the seller, FP, previous to the closing of March

26, 1990 was on the day of closing when Can-Am tried to get FP to reduce the purchase price due to the reported aircraft damage history.

The purchase agreement (brokerage agreement) (DX-A) between Can-Am and Decker is complete within itself and unambiguous. Mercury Inv. Co. v. F.W. Woolworth Co., 706 P.2d 523 (Okl. 1985). It was Can-Am's responsibility to inspect and check out the subject airplane but, against the advice of Decker, Can-Am proceeded with the aircraft purchase. It is undisputed Decker had no knowledge of the prior damage history of the airplane, and as soon as Decker learned of the damage history, on the day of closing, Decker immediately advised Can-Am. Decker was in the position of a "finder" when it learned of the prior damage and advised Can-Am against proceeding with the purchase. Equity Benefit Life Ins. Co. v. Trent, 566 P.2d 449 (Okl. 1977). Can-Am acted on its own in going forward with the purchase of the used aircraft. Dawson v. Tindell, 733 P.2d 407 (Okl. 1987); *see also,* American Academy of Accountancy v. Jones, 96 P.2d 73 (Okl. 1939), and Watt Plumbing, Air Conditioning & Electric, Inc. v. Tulsa Rig, Reel & Mfg. Co., 533 P.2d 980 (Okl. 1975).

The evidence establishes that FP made no warranties or representations regarding the subject used airplane to Can-Am. Can-Am was to make arrangements for Tulsa Intercontinental Jet, Inc. and the co-defendant Robert Kidd to make the prepurchase inspection. It is undisputed that Can-Am did not pay Tulsa Intercontinental Jet, Inc. for such an inspection. Can-Am has now

settled with Tulsa Intercontinental Jet, Inc. and Kidd. With knowledge of the prior damage (resulting from three wheels up landings) which could affect the airplane's airworthiness and part 135 schedule status as disclosed by the log, Can-Am chose to proceed with the purchase on an "as is" basis, even when FP had offered to refund the purchase price if Can-Am did not want to proceed with the aircraft purchase.

For the reasons set forth above, the Court concludes that there are no material issues of fact as to Plaintiff's claims against the remaining Defendants, Decker and FP. The Motions for Summary Judgment of the Defendants, Decker and FP, are therefore SUSTAINED.

DATED this 25th day of February, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DA inc.
DECKER AVIATION, INC.

"EXHIBIT A"

1970 MITSUBISHI MU-2G (MU-2B-30)
SERIAL NUMBER: 508

TOTAL TIME: 5573 HOURS SINCE NEW

ENGINES: GARRETT TPE-331-1-151A
LEFT ENGINE: 2367 HOURS SOH / 564 HOURS SHS
(5400 HR. TBO)
RIGHT ENGINE: 2039 HOURS SOH / 664 HOURS SHS
(5400 HR. TBO)

PROPS: DUE 10/93 - WOODWARD CONTROLLERS

NO DAMAGE HISTORY / CURRENTLY ON PART 135

AVIONICS: KING GOLD CROWN

COMS:	DUAL KTR-900A	NAVS:	DUAL KNR-660A
ADF:	KDF-800A	TXPR:	KXP-750A
RADAR:	RDR-1200	DME:	KDM-705A
A/P:	BENDIX M4-C	F/D:	SPERRY STARS
F/F:	FLITEFONE III W/DUAL HANDSETS		

OPTIONAL EQUIPMENT:

FULL DE-ICE W/ HOT PILOT WINDSHIELD / FORWARD FLUSHING TOILET

REFRESHMENT CENTER EXECUTIVE TABLE STEREO SYSTEM

EXTRA AFT FUSELAGE WINDOWS SUPER SOUNDPROOFING

INTERIOR: 8 SEATS, 4 CLUB CHAIRS, 2 FORWARD FACING
LIGHT BLUE TWEED FABRIC SEATS / BLUE CARPET
BLUE SIDEPANELS / DARK WOOD ACCENTS / INDIRECT LIGHTING
(NEW - 6/87)

EXTERIOR: OVERALL WHITE / RED STRIPES (NEW - 6/87)

PRICE: $250,000

'ALL SPECIFICATIONS SUBJECT TO VERIFICATION UPON INSPECTION

POST OFFICE BOX 38983
MEMPHIS, TENNESSEE 38138

TELEPHONE (901) 756-2875
FAX (901) 756-2876

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

VESTA ENERGY COMPANY,
an Oklahoma corporation,

Plaintiff,

v.

WILLIAMS NATURAL GAS COMPANY,
a Delaware corporation,

Defendant.

Case No. 91-C-0837-E

ORDER

NOW, on this 24th day of February, 1992, the captioned action comes before the Court, after having been administratively closed until February 20, 1992. The Court finds that the parties have filed a Stipulation of Dismissal With Prejudice and hereby orders that all claims asserted herein be, and they are hereby, dismissed.

S/ JAMES O. ELLISON

JUDGE OF THE U.S. DISTRICT COURT

Submitted by:

Fred C. Cornish, OBA #1924
Stephen E. Schneider, OBA #7970
CORNISH & SCHNEIDER, INC.
321 South Boston, Suite 917
Tulsa, Oklahoma 74103
(918) 583-2284

ATTORNEYS FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CAN-AM INTERNATIONAL, INC., a Virginia corporation,

Plaintiff,

vs.

FIRST PRESIDENTIAL CORPORATION, a Texas corporation, TULSA INTERCONTINENTAL JET, INC., an Oklahoma corporation, ROBERT KIDD, a/k/a BOB KIDD, an individual, and DECKER AVIATION, INC., a Tennessee corporation; and CORPORATE AVIATION SERVICES, INC., an Oklahoma corporation,

Defendants.

No. 91-C-68-B

FILED

FEB 25 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

JUDGMENT

In keeping with the Order Sustaining the Motions for Summary Judgment entered this date, Judgment is hereby entered in favor of the Defendants, First Presidential Corporation and Decker Aviation, Inc., and against the Plaintiff, Can-Am International, Inc., and Can-Am International, Inc.'s action is hereby dismissed. Costs are hereby awarded to said Defendants if timely applied for pursuant to Local Rule 6 and each party is to pay their own respective attorneys fees.

DATED this 25th day of February, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CONTINENTAL CASUALTY COMPANY, a foreign corporation,

Plaintiff,

v.

KAISER-FRANCIS OIL COMPANY, a Delaware corporation,

Defendant.

No. 91-C-507-B

O R D E R

The Motion for Summary Judgment of the Defendant, Kaiser-Francis Oil Company ("KF"), pursuant to Fed.R.Civ.P. 56 is before the Court for decision. Plaintiff, Continental Casualty Company ("CC"), commenced this action seeking a declaratory judgment that its comprehensive general liability policy No. CCP2458876 insuring Wheeling-Pittsburgh Steel Corporation ("WPS") did not cover down hole well damage experienced by Defendant, KF, on August 13, 1979, when a joint of 4 1/2" well casing manufactured by the insured, WPS, broke in half due to a manufacturing defect. Jurisdiction is based upon diversity of citizenship and the amount in controversy exceeding $50,000.00.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Windon Third Oil & Gas v. FDIC, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

13

> "The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

The record reveals the following undisputed material facts:

1. KF at relevant times herein was the operator of the Hampton #2 Well, located in Section 22, Township 5 North, Range 5 West, Grady County, Oklahoma (hereinafter referred to as "the Well.") (PX-A and PX-B).

2. A string of 4 1/2" OD N-80 casing that was manufactured by WPS was run into the Well on November 27-28, 1978, and the cementing of the casing was completed on November 29, 1978. (PX-A and PX-C). A single joint of said 4 1/2" casing broke in half as the Well was being prepared for formation fracturing on August 13, 1979. (PX-A).

3. The casing manufacturer, WPS, was insured by a comprehensive general liability policy of insurance with CC, Policy No. CCP2458876 (the "Policy"), which was in effect at the time the subject casing broke down hole in the Well. (PX-D, DX-B and DX-C). As a direct result of the WPS casing breaking down hole in the Well, Kaiser-Francis expended $189,783.04 in restoring the Well to

its condition prior to the break, exclusive of the cost of the WPS joint of defective casing which, at the time of purchase by KF in 1978, was $248.79. (PX-E, PX-B and PX-G).

4. KF brought an action in the state court of Oklahoma against WPS on August 2, 1982, styled Kaiser-Francis Oil Company v. Wheeling Pittsburgh Steel Corporation, District Court of Tulsa County, State of Oklahoma, Case No. C-82-1991, to recover damages suffered by Kaiser-Francis in restoring the Well to its condition prior to the failure of the WPS casing (hereinafter referred to as the "state court action.") (PX-F).

5. KF's state court petition stated that KF was seeking from WPS amounts pertaining to damages to property of KF. (PX-F).

6. On April 16, 1985, WPS filed a Petition for Relief under the federal bankruptcy laws. (PX-H).

7. During the course of the WPS Chapter 11 proceedings KF petitioned for and received an order of relief from the bankruptcy automatic stay on April 14, 1989. (PX-H).

8. The Order Granting Relief from the Automatic Stay operates to make WPS no longer the real party in interest herein. (PX-D, ¶9 and PX-H).

9. On June 10, 1991, the state court action went to trial, and on June 12, 1991, the jury returned a general verdict in favor of KF and against WPS for the amount prayed for of $190,031.83. (PX-J).

The Continental insuring agreement in the subject policy states:

> ". . . [t]he company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of . . . property damages to which this insurance applies, caused by an occurrence."

In seeking declaratory relief Continental relies upon Exclusion (n) which states:

> "This insurance does not apply:
>
> * * *
>
> (n) to property damage to the named insured's products arising out of such products or any part of such products; . . . . "

Continental urges that this language excludes coverage for property damage to a third party's property, like KF, caused by its insured's defective product.

Many cases have interpreted Exclusion (n) language, or similar language, and have concluded that it excludes from coverage only damages to property manufactured, sold, handled, or distributed by the named insured. Damages to third parties' property are not excluded by this clause. Hartford Accident & Indemnity Co. v. Pacific Mutual Life Ins. Co., 861 F.2d 250 (10th Cir. 1988); Continental Casualty Co. v. Gilbane Bldg. Co., 391 Mass. 143, 461 N.E.2d 209 (1984); Dayton Independent School Dist. v. National Gypsum Co., 682 F.Supp. 1403 (E.D. Tex. 1988) *rev'd on other grounds,* W.R. Grace & Co. v. Continental Casualty Co., 896 F.2d 865 (5th Cir. 1990) (the immediate two preceding cases interpret clause (n) in Continental's comprehensive general liability policy); Todd Shipyards Corp. v. Turbine Service, Inc., 674 F.2d 401 (5th Cir.

1982); St. Paul Fire and Marine Ins. Co. v. Sears, Roebuck & Co., 603 F.2d 780 (9th Cir. 1979); Carboline Co. v. Home Indemnity Co., 522 F.2d 363 (7th Cir. 1975); Honeycomb Systems, Inc. v. Admiral Ins. Co., 567 F.Supp. 1400 (D. Me. 1983); Aetna Casualty & Surety Co. v. PPG Industries, Inc., 554 F.Supp. 290 (D. Ariz. 1983); Indiana Ins. Co. v. Dezutti, 408 N.E.2d 1275 (Ind. 1980); Wyoming Sawmills, Inc. v. Transportation Ins. Co., 282 Or. 401, 578 P.2d 1253 (1978); Hartford Accident & Indemnity Co. v. Olsen Brothers, Inc., 187 Neb. 179, 188 N.W.2d 699 (1971); Forest City Dillon, Inc. v. Aetna Casualty & Surety Co., 852 F.2d 168 (6th Cir. 1988); Bundy Tubing Co. v. Royal Indemnity Co., 298 F.2d 151 (6th Cir. 1962).

In Ross Island Sand & Gravel Co. v. General Ins. Co. of Amer., 315 F.Supp. 402, 404 (D. Or. 1970), the court stated:

> "The cases which have construed provisions similar to [clause (n)] uniformly hold that the provisions exclude coverage only for the cost of purchasing a new product [citations omitted]. The provisions do not exclude coverage for the cost of removing and replacing a defective product from a structure into which it has been incorporated."

There is no dispute that both before and after the damage KF's Hampton #2 Well was a valuable producing oil and gas property. Oklahoma law recognizes two different measures of "property damage." Damage to real property, which includes an oil and gas well, may be either the reasonable cost of repairing the damage and restoring the property to its former condition, Ellison v. Walker, 281 P.2d 931, 933 (Okla. 1955), or the diminution in value of the property. Hartford Accident, 861 F.2d at 252. KF was within

its rights to repair the damaged well and restore it for production because such cost was less than the fair value of the property before and after the injury. Ellison, 281 P.2d at 933.

KF concedes that clause (n) precludes recovery by KF for the value of the joint of failed casing. The Court concludes, however, that clause (n) does not prevent KF from recovering the costs of restoration of the Hampton #2 Well to its condition previous to the WPS casing rupturing in the Well. Clause (n) is unambiguous on its face and such exclusion does not operate to deny insurance coverage for repair and replacement costs to restore the property of the injured third party, KF. Therefore, the Court SUSTAINS KF's Motion for Summary Judgment to the extent the Court finds coverage under CC's policy as aforesaid. The Court, however, reserves entry of a judgment in favor of KF against CC because the judgment against CC's insured, WPS, in the state court is not final as it is pending appeal. If and when the state court judgment is affirmed, judgment herein will be entered in keeping with the above, but until such time this matter will be placed on the inactive docket. The parties shall advise the Court promptly when there is a final disposition of the state court action.

DATED this 25th day of February, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JUANITA LONG, ET AL
Plaintiff(s),

vs. No. 90-C-958-C

MARY TAPP, ET AL
Defendant(s).

JUDGMENT DISMISSING ACTION BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 22nd day of February, 1992.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SONNY BUZZARD, GARY FORREST, DAN HAYES, DAYTON HOLT, AUSTIN KETCHER, ROGER LIMORE, NORMAN LITTLEDAVE, BOBBY MAYFIELD, DIANNA MAYFIELD, ADALENE SMITH, ROBERTA SMOKE, CAROL STACY, PEGGY STEPP, MARY STIGLETS, TABBIE HESS, J. L. BARNETT, Smokeshop Managers and Licensees; THE UNITED KEETOOWAH SMOKESHOP ASSOCIATION, an unincorporated Indian Organization, THE UNITED KEETOOWAH BAND OF CHEROKEE INDIANS OF OKLAHOMA,

Plaintiffs,

v.

THE OKLAHOMA TAX COMMISSION; ROBERT ANDERSON, Chairman of the Tax Commission, ROBERT L. WADLEY, Vice Chairman of the Tax Commission; and DON KILPATRICK, Secretary of the Tax Commission; JON D. DOUTHITT, District Attorney for Delaware and Ottawa Counties, Oklahoma; JIM EARP, Sheriff for Delaware County, Oklahoma; GERALD HUNTER, District Attorney for Adair, Cherokee, Wagoner, and Sequoyah Counties, Oklahoma; W. A. "DREW" EDMONDSON, District Attorney for Muskogee County, Oklahoma; PATRICK R. ABITOL, District Attorney for Rogers, Mayes, and Craig Counties, Oklahoma; and their successors in office,

Defendants.

FILED

FEB 24 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

No. 90-C-848-B

JUDGMENT

In keeping with the Order Sustaining the Defendants' Motions

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for Summary Judgment entered this date, Judgment is hereby entered in favor of the Defendants, the Oklahoma Tax Commission; Robert Anderson, Chairman of the Tax Commission; Robert L. Wadley, Vice Chairman of the Tax Commission; and Don Kilpatrick, Secretary of the Tax Commission; Jon D. Douthitt, District Attorney for Delaware and Ottawa Counties, Oklahoma; Gerald Hunter, District Attorney for Adair, Cherokee, Wagoner, and Sequoyah Counties, Oklahoma; W. A. "Drew" Edmondson, District Attorney for Muskogee County, Oklahoma; Patrick R. Abitol, District Attorney for Rogers, Mayes, and Craig Counties, Oklahoma; and their successors in office; and against the Plaintiff, the United Keetoowah Band of Cherokee Indians of Oklahoma. Plaintiff's action is hereby dismissed. Costs are awarded to said Defendants if timely applied for pursuant to Local Rule 6 and each party is to pay their own respective attorneys' fees.

DATED this 24 day of February, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 24 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ROSALIE G. CLARK, Individually, and as Surviving Spouse and Next of Kin of LOUIS O. CLARK, Deceased,

Plaintiff,

vs.

FIBREBOARD CORPORATION, et al

Defendants.

No. 92-C-62-E

STIPULATION OF DISMISSAL
WITH PREJUDICE AS TO DEFENDANT
PITTSBURGH CORNING CORPORATION ONLY

COME NOW the Plaintiff, Rosalie G. Clark, and the Defendant, Pittsburgh Corning Corporation, by their respective counsel, and hereby stipulate and agree that the above-captioned cause be dismissed with prejudice, as to Defendant Pittsburgh Corning Corporation only, each party to pay their own costs, for the reason that Plaintiff and this Defendant have previously entered into a settlement agreement. This cause is to remain pending against all other remaining Defendants.

DATED this 24th day of February, 1992.

Respectfully submitted,

UNGERMAN & IOLA

By: _____
Mark H. Iola OBA #4553
1323 East 71st Street
Tulsa, Oklahoma 74136
(918) 495-0550

ATTORNEYS FOR PLAINTIFF

WELLER, WHEELUS & GREEN

By: _____
Edward H. Green
550 Fannin Street
P. O. Box 350
Beaumont, Texas 77704-0350
(409) 838-0101

ATTORNEYS FOR DEFENDANT
PITTSBURGH CORNING CORPORATION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. 2,560.00 ACRES OF LAND, MORE OR LESS, SITUATED IN WASHINGTON COUNTY, STATE OF OKLAHOMA, et al., Defendants.	)	No. 79-C-687-E
UNITED STATES OF AMERICA, Plaintiff, vs. 1,022.35 ACRES OF LAND, MORE OR LESS, SITUATED IN WASHINGTON COUNTY, STATE OF OKLAHOMA, et al., Defendants.	)	No. 79-C-688-E
UNITED STATES OF AMERICA, Plaintiff, vs. 75.00 ACRES OF LAND, MORE OR LESS, SITUATED IN WASHINGTON COUNTY, STATE OF OKLAHOMA, et al., Defendants.	)	No. 79-C-689-E

O R D E R

Pursuant to the Tenth Circuit mandate Landowners' petitions

for attorney fees and related expenses are denied.

No further additional matters pend herein; accordingly, the above-captioned consolidated cases are hereby closed.

So ORDERED this 21st day of February, 1992.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. 2,560.00 ACRES OF LAND, MORE OR LESS, SITUATED IN WASHINGTON COUNTY, STATE OF OKLAHOMA, et al., Defendants.	)	No. 79-C-687-E
UNITED STATES OF AMERICA, Plaintiff, vs. 1,022.35 ACRES OF LAND, MORE OR LESS, SITUATED IN WASHINGTON COUNTY, STATE OF OKLAHOMA, et al., Defendants.	)	No. 79-C-688-E
UNITED STATES OF AMERICA, Plaintiff, vs. 75.00 ACRES OF LAND, MORE OR LESS, SITUATED IN WASHINGTON COUNTY, STATE OF OKLAHOMA, et al., Defendants.	)	No. 79-C-689-E

O R D E R

Pursuant to the Tenth Circuit mandate Landowners' petitions

for attorney fees and related expenses are denied.

No further additional matters pend herein; accordingly, the above-captioned consolidated cases are hereby closed.

So ORDERED this 21st day of February, 1992.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. 2,560.00 ACRES OF LAND, MORE OR LESS, SITUATED IN WASHINGTON COUNTY, STATE OF OKLAHOMA, et al., Defendants.	)	No. 79-C-687-E
UNITED STATES OF AMERICA, Plaintiff, vs. 1,022.35 ACRES OF LAND, MORE OR LESS, SITUATED IN WASHINGTON COUNTY, STATE OF OKLAHOMA, et al., Defendants.	)	No. 79-C-688-E
UNITED STATES OF AMERICA, Plaintiff, vs. 75.00 ACRES OF LAND, MORE OR LESS, SITUATED IN WASHINGTON COUNTY, STATE OF OKLAHOMA, et al., Defendants.	)	No. 79-C-689-E ✓

O R D E R

Pursuant to the Tenth Circuit mandate Landowners' petitions

for attorney fees and related expenses are denied.

No further additional matters pend herein; accordingly, the above-captioned consolidated cases are hereby closed.

So ORDERED this 21st day of February, 1992.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAYNARD L. WILEY and VELMA L. WILEY, Plaintiffs,	)	
vs.	)	Case No. 91-C-125-B
TIME INSURANCE COMPANY, a corporation, and ALBERT DARRELL SMITH, an individual, Defendants.	)	

FILED
FEB 24 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL OF DEFENDANT, SAUNDRA V. SMITH

NOW ON this 24th day of February, 1992, the Plaintiffs' Application for Order of Dismissal of Defendant, Saundra V. Smith, comes on before the Court and the Court finds that the same should be granted. The Court further finds that all claims against the Defendant, Saundra V. Smith, were previously dismissed by the Plaintiffs in their Third Amended Company. The Court also finds that all Defendants having been dismissed, the action in its entirety is dismissed.

IT IS THEREFORE ORDERED that this action is dismissed against the Defendant, Saundra V. Smith, with prejudice to any refiling.

S/ THOMAS H. BRETT

THOMAS R. BRETT
DISTRICT JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ECC ENERGY CORPORATION, an Oklahoma corporation,	)	
Plaintiff,	)	
vs.	)	Case No. 89-C-261-B
CABOT PIPELINE CORPORATION, a Delaware corporation; DYCO PETROLEUM CORPORATION, a Minnesota corporation; and WESTAR TRANSMISSION COMPANY, a division of CRANBERRY PIPELINE CORPORATION, a Delaware corporation,	)	

JUDGMENT

In accordance with the Findings of Fact and Conclusions of Law entered this day, Judgment is hereby entered against the Plaintiff, ECC Energy Corporation, and in favor of the Defendants, Cabot Pipeline Corporation and Westar Transmission Company, a division of Cranberry Pipeline Corporation,[1] in the amount of $14,831.70. Interest on that Judgment shall accrue at the rate of ~~9.58 percent~~ 4.21% per annum beginning on the date set forth below.

Judgment entered this 24 day of February, 1992.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

[1] The Defendants are now know as The Maple Gathering Corporation and Westar Transmission Company, a Delaware corporation.

lc29251

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LARRY DON LONG and BARBARA KAY LONG,

Plaintiffs,

vs.

J & B MANAGEMENT COMPANY, a corporation, and CONNECTICUT GENERAL LIFE INSURANCE COMPANY, a corporation,

Defendants.

Case No. 91-C-613-B

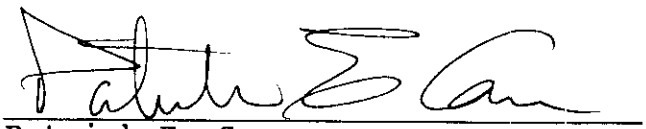
O R D E R

NOW on this 24 day of Feb, 1992, the Motion to Vacate Judgment and To Dismiss of Defendant, Connecticut General Life Insurance Company, comes on before the Court. The Court finds that the Plaintiffs have conceded that service on the Defendant was improper and that the Motion to Vacate the Default Judgment entered by the Court on October 4, 1991, should be granted. The Court further finds that the Defendant, Connecticut General Life Insurance Company, has waived service of summons and that in the Scheduling Order entered by the Honorable Jeffrey Wolfe, Magistrate Judge, on February 11, 1991, the Defendant's responsive pleading to the Plaintiffs' Complaint is due by February 28, 1992.

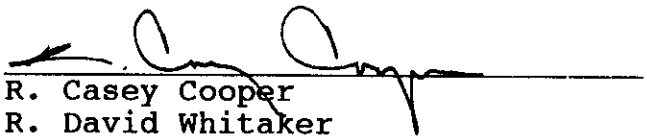
IT IS THEREFORE ORDERED that the Motion to Vacate Judgment be and the same is hereby granted and the Default Judgment entered herein by the Clerk of the Court on October 4, 1991, is hereby vacated. Defendant's Motion to Dismiss is moot.

Thomas R. Brett
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:



Patrick E. Carr
Attorney for Plaintiff



R. Casey Cooper
R. David Whitaker
BOESCHE, MCDERMOTT & ESKRIDGE
Attorney for Defendant,
Connecticut General Life
Insurance Company

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SANDRA J. ANGLIN,

Plaintiff,

v.

HARTFORD INSURANCE GROUP, a foreign insurance company and ALLSTATE INSURANCE COMPANY, a foreign insurance company,

Defendants.

Case No. 91-C-537-C

ORDER

For good cause shown, and upon joint application of the parties, the above captioned case is hereby dismissed with prejudice.

U. S. DISTRICT JUDGE

13

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 24 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

PRUDENTIAL PROPERTY & CASUALTY INSURANCE COMPANY,	)	
Plaintiff,	)	
v.	)	91-C-235-B
JOHN WALTER PIPPIN, JR., et al,	)	
Defendants.	)	

ORDER

The court has for consideration the Report and Recommendation of the Magistrate Judge filed January 27, 1992, in which the Magistrate Judge recommended that this case be dismissed without prejudice and without payment of defendants' costs and fees. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Report and Recommendation of the Magistrate Judge should be and hereby is affirmed.

It is therefore Ordered that this case be dismissed without prejudice and without payment of defendants' costs and fees.

Dated this 24 day of Feb., 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

QSC PRODUCTS, LTD., a Pennsylvania corporation,	)	
Plaintiff,	)	
vs.	)	
FEDERAL PACKAGING CORPORATION, formerly known as Kardon Industries, Inc., a Delaware corporation,	)	
Defendant.	)	**Civil Action No. 91-C-216-B**

ORDER DISMISSING WITH PREJUDICE

COMES ON NOW before the Court for hearing the motion by Plaintiff and Defendant herein for an order dismissing the captioned case with prejudice and the Court having reviewed the files and finding due cause therefore hereby dismisses this action with prejudice.

IT IS SO ORDERED this 24th day of Feb., 1992.

UNITED STATES DISTRICT JUDGE

[Pldgs-1/15939012.Dis/msc]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SONNY BUZZARD, GARY FORREST, DAN HAYES, DAYTON HOLT, AUSTIN KETCHER, ROGER LIMORE, NORMAN LITTLEDAVE, BOBBY MAYFIELD, DIANNA MAYFIELD, ADALENE SMITH, ROBERTA SMOKE, CAROL STACY, PEGGY STEPP, MARY STIGLETS, TABBIE HESS, J. L. BARNETT, Smokeshop Managers and Licensees; THE UNITED KEETOOWAH SMOKESHOP ASSOCIATION, an unincorporated Indian Organization, THE UNITED KEETOOWAH BAND OF CHEROKEE INDIANS OF OKLAHOMA,

Plaintiffs,

v.

THE OKLAHOMA TAX COMMISSION; ROBERT ANDERSON, Chairman of the Tax Commission, ROBERT L. WADLEY, Vice Chairman of the Tax Commission; and DON KILPATRICK, Secretary of the Tax Commission; JON D. DOUTHITT, District Attorney for Delaware and Ottawa Counties, Oklahoma; JIM EARP, Sheriff for Delaware County, Oklahoma; GERALD HUNTER, District Attorney for Adair, Cherokee, Wagoner, and Sequoyah Counties, Oklahoma; W. A. "DREW" EDMONDSON, District Attorney for Muskogee County, Oklahoma; PATRICK R. ABITOL, District Attorney for Rogers, Mayes, and Craig Counties, Oklahoma; and their successors in office,

Defendants.

FILED
FEB 24 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

No. 90-C-848-B

O R D E R

Before the Court for decision are the Motions for Summary Judgment filed by the Defendants Oklahoma Tax Commission ("OTC"), its named officers, and the Defendants Oklahoma District Attorneys

Douthitt, Hunter, Edmondson and Abitol,[1] as well as motion for summary judgment filed by the plaintiff, the United Keetoowah Band of Cherokee Indians ("UKB").

This suit was brought by the United Keetoowah Smokeshop Association ("UKSA"), an unincorporated Indian organization, individual smokeshop managers and licensees, and the UKB. In its Order of May 2, 1991, the Court sustained the defendants' motions to dismiss the individual plaintiffs and the UKSA. The UKB, therefore, is the only remaining plaintiff in this case. In bringing this suit, the UKB seeks injunctive relief prohibiting the enforcement of Oklahoma's tobacco taxing statutes in smokeshops allegedly owned and licensed by the UKB and located within the boundaries of the original Cherokee Indian Reservation.

The Keetoowah Society of Oklahoma Cherokees had existed within the original Cherokee Tribe of Oklahoma since the 1800s as an "organization of full-bloods dedicated to preservation of Indian culture and traditions. It represented the most conservative portion of the Cherokee Indians, and had several specific objectives, including opposition to slavery and subsequent opposition to allotment." (PX-AK, Briefing Paper for Deputy Ass't Secretary).[2] When the Keetoowahs later sought recognition by

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[1] Upon motion of the plaintiffs,the Court dismissed Jim Earp, Sheriff for Delaware County, Oklahoma, on February 11, 1991.

[2] The exhibits designated "PX" reference plaintiff's exhibits A through AX in support of plaintiff's motion for preliminary injunctive relief, in opposition to defendant's motion to dismiss as converted to motion for summary judgment and plaintiff's cross motion for summary judgment. (Docket #59).

Congress in order to organize as a separate band under the Oklahoma Indian Welfare Act, 25 U.S.C. §503 ("OIWA"), Congress enacted the Act of August 10, 1946 which stated "[t]hat the Keetoowah Indians of the Cherokee Nation of Oklahoma shall be recognized as a band of Indians residing in Oklahoma within the meaning of section 3 of the Act of June 26, 1936." (PX-B). In 1950 the UKB organized under the OIWA, adopting a constitution and by-laws, as well as a Corporate Charter. (PX-L and PX-M).

Another descendant of the old Cherokee tribe is the Cherokee Nation. The Cherokee Nation did not avail itself of the right to organize under the OIWA; however, in 1976 the Cherokee Nation adopted a new constitution, its current governing document, which was approved by the Commissioner of Indian Affairs.

Historically, the Bureau of Indian Affairs and the Department of the Interior have recognized the Cherokee Nation as the primary Cherokee tribe. Because the Department of the Interior has determined that the population of the UKB is included in the population base of the Cherokee Nation, the Secretary has designated the Cherokee Nation as the proper recipient of grants and contracts applied for under Public Law 93-638 until the UKB establishes a "tribal roll to identify its service population, separate and apart from the Cherokee Nation." (PX-AM). Furthermore, the Secretary has refused to take any lands within the boundaries of the original Cherokee Indian Reservation into trust for the UKB without the consent of the Cherokee Nation, and the Cherokee Nation has refused to grant its consent. (PX-AP). It is this compendium of

events from which the present controversy arises.

The parties agree that the only issue before the Court is whether the subject smokeshops are located in Indian country. The resolution of this issue determines whether the UKB is required to collect and remit state taxes on sales of tobacco to non-tribal members. In Oklahoma Tax Commission v. Citizen Band Potawatomi Tribe of Oklahoma, ___U.S.___, 111 S.Ct. 905 (1991), the Supreme Court reaffirmed the doctrine of tribal sovereign immunity when the Court held that the State of Oklahoma could not impose sales tax on cigarette sales to non-tribal members in a tribal owned convenience store located on land held by the federal government in trust for the tribe. However, the Court also reiterated its decisions in Moe v. Confederated Salish and Kootenai Tribes, 425 U.S. 463 (1976) and Washington v. Confederated Tribes of Colville, 447 U.S. 134 (1980) that Indian retailers in Indian country may be required to collect all applicable state taxes on sales to non-tribal members. Therefore, if the subject smokeshops are not located in Indian country, the OTC may assess taxes on tobacco sales to tribal members and non-members alike.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Windon Third Oil & Gas v. FDIC, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

> The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

The UKB states that the following are controverted facts:

> 1. That the land in question upon which the United Keetoowah Band of Cherokee Indians in Oklahoma have located their smoke shops is restricted against alienation and, therefore, Indian Country.
> 2. There has been no express legislation disestablishing the boundaries of the old Cherokee Reservation in Oklahoma.

(UKB's Reply Brief, Statement of Controverted Facts) (exhibits omitted). The Court, however, finds that these are matters of law, not issues of fact, and concludes that there are no genuine issues of material fact which would preclude summary judgment.

The term "Indian country" is defined by statute as

> (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-

of-way running through the same.

18 U.S.C. §1151. While this statute is included in the federal criminal code governing applicable federal criminal law in Indian country, the Supreme Court has held that the statute's definition of Indian country also applies to issues of federal civil and tribal jurisdiction. California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1986); DeCocteau v. District County Court, 420 U.S. 425, 427 n.2 (1975).

The statutory definition of Indian country has been expanded through judicial decision to include land held in trust by the federal government for the benefit of Indian tribes. The Supreme Court recently revisited this broader definition in Oklahoma Tax Comm'n v. Potawatomi Indian Tribe, ___U.S.___, 111 S.Ct. 905 (1991), in which the Court found that land held in trust for the Potawatomis was Indian country:

> In *United States v. John*, 437 U.S. 634, 98 S.Ct. 2541, 57 L.Ed.2d 489 (1978), we stated that the test for determining whether land is Indian country does not turn upon whether the land is denominated "trust land" or "reservation." Rather, we ask whether the area has been "validly set apart for the use of the Indians as such, under the superintendence of the Government."

Id. at 910. See also Cheyenne-Arapaho Tribes v. State of Oklahoma, 618 F.2d 665, 667-68 (10th Cir. 1980).

The UKB does not claim that any of the smokeshop sites are located within dependent Indian communities or on Indian

allotments[3] or trust land. The UKB instead argues that it is entitled to exercise tribal sovereignty over the subject lands because (1) they are reservation lands, and the UKB is heir to these unallotted lands within the limits of the original Cherokee Indian Reservation;[4] and (2) these lands, while held by the UKB in fee, are similar to "trust lands," as they are subject to restrictions imposed by 25 U.S.C. §177 and the Charter of the UKB.

(1) The UKB, in essence, argues that the smokeshops sites which are unallotted lands located within the boundaries of the original Cherokee Indian Reservation transform into Indian country upon the UKB's purchase in fee. The UKB reaches this conclusion reasoning that a) it is one of the bands of Cherokee Indians for whom the original Cherokee Indian Reservation was established; b) the original Cherokee Indian Reservation has never been

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[3] Although there is some evidence in the record that the smokeshop operated by Roberta Smoke, a former plaintiff in this case, is located on an Indian allotment (Defendant District Attorneys' Brief, Affidavit of Margrett Kelly, Exh.2), the UKB does not claim that any of the subject smokeshops sites are Indian allotments.

[4] The original Cherokee Indian Reservation was established by several federal treaties including the Treaties of May 6, 1828, 7 Stat. 311, and New Echota of December 29, 1835, 7 Stat. 478, as clarified and/or modified by the Treaty of August 6, 1846, 9 Stat. 871. These reservation lands were later subject to allotment pursuant to the Act of March 1, 1901, 31 Stat. 848, the Act of July 1, 1902, 32 Stat. 716, and the Act of April 26, 1906, 34 Stat. 137. Lands not allotted to the members of the Cherokee tribe or reserved for the use of the tribe as town, church or school sites, were sold on the open market "and the proceeds of such sales deposited in the United States Treasury to the credit of the [Cherokee tribe]." Section 16 of the Act of April 26, 1906, 34 Stat. 137.

The UKB, in effect, claims that the unallotted land within the boundaries of the original Cherokee Indian Reservation which it has purchased in fee is reservation land.

disestablished; c) Congress recognized the UKB by the Act of August 10, 1946, 60 Stat. 976; and d) the UKB's corporate Charter and By-Laws, issued by the Secretary of the Interior pursuant to Section 3 of the OIWA, 25 U.S.C. §503, recognize the UKB's rights to the original Cherokee Indian Reservation.

The UKB, however, offers no authority to support its claim that it is heir to the original Cherokee Indian Reservation. The Act of August 10, 1946 simply recognizes the UKB as a "band of Indians residing in Oklahoma"; it does not set aside a reservation for the UKB or acknowledge the UKB's jurisdiction over the original Cherokee Indian Reservation. Also, while the Act's recognition of the UKB permitted the UKB to incorporate under Section 3 of the OIWA, nothing in Section 3 creates or recognizes the UKB's claim to the original Cherokee Indian Reservation. Neither does the UKB's Corporate Charter, Constitution or By-Laws grant the UKB jurisdiction over the reservation lands.[5]

Contrary to the UKB's claim, the Secretary of the Interior has determined that the lands within the original Cherokee Indian Reservation are not under the jurisdiction of the UKB:

> The first issue to be addressed is whether the United Keetoowah Band has a reservation as that term is used in the land acquisition regulations. [25 C.F.R. §151.8] We believe it is clear that they do not. The regulations

[5] Section 7 of the Corporate Charter states that "[t]he Band ownership of unallotted lands, whether or not occupied by particular individuals, is hereby expressly recognized." This section, however, merely recognizes UKB's corporate right to own unallotted lands, not its right to assume jurisdiction over the unallotted lands within the boundaries of the original Cherokee Indian Reservation.

> define the term "Indian reservation", in the State of Oklahoma, "as that area of land constituting the former reservation of the tribe as defined by the Secretary." 25 CFR 151.2(f). The United Keetoowah Band has never had a reservation in Oklahoma, and the Band has never exercised independent governing authority over any of the Cherokee Nation's reservations lands. . . . While the [Act of August 10, 1946] recognized the society as a Band for the purposes of organizing under the Oklahoma Indian Welfare Act, it did not create or set aside a reservation for the Band. Neither did it purport to give the newly acknowledged Band any authority to assert jurisdiction over any lands belonging to the Cherokee Nation.

(Defendants District Attorneys' Brief in Support of Motion for Summary Judgment, Exhibit 4). Furthermore, as this Court noted in The United Keetoowah Band of Cherokee Indians in Oklahoma v. Secretary of the Dept. of Interior, No. 90-C-608-B (May 31, 1991), the Secretary has recognized that the original Cherokee Indian Reservation is the former reservation of the Cherokee Nation, not the UKB, thereby necessitating the UKB's procurement of the Cherokee Nation's consent before the Secretary will acquire any such land in trust for the UKB pursuant to 25 U.S.C. §465. *See* 25 C.F.R. §151.8.

The Court, therefore, concludes that UKB has failed to show any treaty or Congressional act establishing UKB's "inherited" right or claim to reservation land within the boundaries of the old Cherokee Indian Reservation.[6]

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[6] In so holding, the Court need not reach the issue of whether or not the original Cherokee Indian Reservation has been terminated or disestablished.

(2) The UKB also argues that because the subject lands owned by the UKB are restricted against alienation by direct action by Congress in enacting 25 U.S.C. §177 which prohibits the "purchase, grant, lease, or other conveyance of [tribal] lands, or of any title or claims thereto" without congressional authorization, and by the Secretary of Interior through the limitations in the Corporate Charter issued to the UKB pursuant to the OIWA, 25 U.S.C. §503, such land is similar to "trust status" land and therefore should be designated Indian country.

The UKB contends that under 25 U.S.C. §177 the UKB must obtain consent of the federal government before the UKB can alienate any of the land it has purchased in fee simple. [7]

The UKB further urges that it is restrained from alienating its land due to the limitation on its power as set forth in the Corporate Charter issued by the Secretary of the Interior. The UKB's power to buy and sell real property is set out in section 3 of the UKB's Corporate Charter:

> The United Keetoowah Band of Cherokee Indians in Oklahoma, subject to any restrictions contained in the Constitution and laws of the

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[7] Section 177, title 25 of the United States Code, is the codification of the Indian Non-Intercourse Acts of 1790 and 1834. In enacting this statute, the Congress was acting in *parens patriae* to protect the tribes from "the practice of state authorized Indian land cessions that had flourished under the Articles of Confederation and during the prior colonial experience." F. Cohen, Handbook of Federal Indian Law 511 (1982); Federal Power Comm'n v. Tuscarora Indian Nation, 362 U.S. 99, 119 (1960) ("The obvious purpose of that statute is to prevent unfair, improvident or improper disposition by Indians of lands owned or possessed by them to other parties, except the United States, without the consent of Congress. . .").

> United States or in the Constitution and Bylaws of the Band, and subject to the limitations of sections 4 and 5 of this Charter, shall have the following corporate powers as provided by section 3 of the Oklahoma Indian Welfare Act. . .
> (*r*) To purchase, take by gift, bequest, or otherwise own, hold, manage, operate, and dispose of property of every description, real or personal.

However, under section 4 of the Corporate Charter, this power is limited: "No land belong [sic] to the Band or interest in land shall ever be sold or mortgaged." The Corporate Charter also incorporates the statutory requirement of an act of Congress to revoke or surrender the charter.

The Cherokee Nation, appearing as amicus curiae, claims that §177 does not impose restraints on the alienation of the UKB's land because the congressional approval required by §177 has been granted through the enactment of §17 of the IRA, 25 U.S.C. §477, which authorizes Indian tribes organized under the IRA "to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real or personal." The Cherokee Nation argues that because the Secretary of the Interior issued the UKB's Corporate Charter pursuant to §3 of the OIWA, 25 U.S.C. §503, and §17 of the IRA, 25 U.S.C. §477, any restraint imposed by §177 has been removed by Congress.

The defendants also urge that the restraint on alienation in section 4 of the Corporate Charter is self-imposed and does not by itself transform fee simple land to trust land. To so find, they

argue, would eviscerate the federal government's power to acquire trust land. Land acquisitions in trust are governed by federal regulations in 25 C.F.R. §151. Section 151.10 sets forth seven factors to be considered by the Secretary of the Interior in evaluating requests for acquisitions of land in trust status:

> (a) The existence of statutory authority for the acquisition and any limitations contained in such authority;
> (b) The need of the individual Indian or the tribe for additional land;
> (c) The purposes for which the land will be used;
> (d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs;
> (e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;
> (f) Jurisdictional problems and potential conflicts of land use which may arise; and
> (g) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

The defendants argue that if the UKB can create trust land simply by acquiring land in fee simple, the Department of the Interior would not have the power to deny trust status if its consideration of the above factors so counseled.

The Court finds the defendants' argument persuasive. The UKB has the power to purchase land in fee without approval from the federal government. The regulations concerning trust acquisitions, contrarily, vest power in the Secretary of the Interior to determine which land will become trust land and thus, Indian

country. The copies of the deeds to the subject tracts reflect that the lands were granted to the "United Keetoowah Band of Cherokee Indians in Oklahoma," and not to the "United States of America in trust for the United Keetoowah Band of Cherokee Indians in Oklahoma." (attached to Defendant OTC's Brief in support of Motion for Summary Judgment). The Court can only conclude from the record before it that the smokeshop sites at the time of the UKB's purchase had lost any restricted status they may have once had and were therefore subject to state jurisdiction. Furthermore, the UKB has failed to cite any action by the federal government after the UKB's purchase by which the federal government assumed jurisdiction over the subject sites, removing the lands from the jurisdiction of the state. While the Court acknowledges that the UKB is restricted from alienating its fee land, the Court cannot conclude from this that the subject lands are Indian country; that is, that they have been "validly set apart for the use of the Indians as [trust land or reservation] under the superintendence of the government." Potawatomi, 111 S.Ct. at 910. The UKB's power to purchase land in fee under its Corporate Charter is not synonymous with the federal government's setting aside land for the use of the UKB, nor does the government's approval before the land can be sold, if any is required, by itself rise to the level of government "superintendence." The Court, therefore, concludes that the restraint on alienation of the UKB's fee land does not create Indian country.

In accordance with the above, the Court holds that the subject

smokeshops owned and operated by the UKB are not in Indian country, and are therefore subject to the taxing authority of the State of Oklahoma.[8] The Court, therefore, sustains the motions for summary judgment filed by the defendants and overrules the motion for summary judgment filed by the UKB.

DATED this 24th day of February, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

[8] In so holding, the Court is not unsympathetic to the plight of the UKB or ignorant of the potential effect of such a ruling on the tribe's self-determination and economic development. The UKB is in the untenable position of being a recognized Indian tribe without land over which to assert tribal sovereignty: the Department of the Interior refuses to acquire UKB's land in trust without the consent of the Cherokee Nation and the Cherokee Nation refuses to grant its consent. Consequently, the dispute is founded in the power struggle between the two tribes of Cherokee Indians. Furthermore, as this Court concluded in The United Keetoowah Band of Cherokee Indians in Oklahoma v. Secretary of the Dept. of Interior, No. 90-C-608-B (May 31, 1991), the UKB cannot bring suit against the Secretary to compel trust acquisition of its land without the Cherokee Nation's consent to waive its sovereign immunity, as the Cherokee Nation is an indispensable party under Fed.R.Civ.P. 19. Under the present state of the law, it appears that the UKB's only remedy is a political one.

IN THE UNITED STATES DISTRICT COURT
OF THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 24 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

BETTIE S. FOUSEL, as Administratrix of the Estate of Orville Gailen Fousel, deceased,

Plaintiff,

vs.

PANDJIRIS WELDMENT CO., PANDJIRIS, INC.,

and

JOHN DOES One (1) through Thirty-nine (39),

Defendants.

Case No. C-91-0057-B

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 24 day of Feb, 1992, it appearing to the Court that this matter has been compromised and settled, this case is hereby dismissed with prejudice to the refiling of a future action.

S/ [illegible]

United States District Judge

F:FOUSEL\PLEADINGS\DISMISSAL.ORD

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RAYMOND E. CESMAT, Plaintiff, vs. MICHAEL'S RANCH, a Nevada Limited Partnership, AMERICAN BANK & TRUST COMPANY, A. LEROY FOSTER and A. S. DENNISON, Defendants.	)	No. 90-C-1056-B

AGREED ORDER AMENDING JUDGMENT, FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 24 day of February, 1992, this cause comes on before this Court upon the Motion to Amend Judgment, Findings of Fact and Conclusions of Law filed herein by American Bank and Trust Company, an Oklahoma banking corporation, a/k/a American Bank & Trust Co. of Tulsa, Oklahoma, a/k/a American Bank & Trust Co. ("American"). American appears by and through its attorneys of record, Jones, Givens, Gotcher & Bogan, by Robert S. Erickson; Plaintiff appears by and through his attorneys of record, Loeffler, Allen & Ham, by Sam T. Allen, IV; Defendants, Michael's Ranch, a Nevada Limited Partnership, A. Leroy Foster and A. S. Dennison, appear by and through their attorneys of record, Walker, Walker & Driskill, by Russell James Walker. For good cause shown, the Court **FINDS** as follows:

1. The Judgment, Findings of Fact and Conclusions of Law entered by this Court on February 7, 1992, should be amended to reflect the correct name of American.

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IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the Judgment, Findings of Fact and Conclusions of Law entered herein on February 7, 1992, are hereby amended in the following manner: throughout said Judgment, Findings of Fact and Conclusions of Law wherever the name American Bank and Trust Company of Sapulpa, Oklahoma appears, the following name shall be and is hereby ordered to be inserted and appear in its place: American Bank and Trust Company, an Oklahoma banking corporation, a/k/a American Bank & Trust Co. of Tulsa, Oklahoma, a/k/a American Bank & Trust Co.

UNITED STATES DISTRICT COURT JUDGE

APPROVED:

JONES, GIVENS, GOTCHER & BOGAN

By: _____
Robert S. Erickson, OBA #11825
3800 First National Tower
Tulsa, Oklahoma 74103
(918) 581-8200

ATTORNEYS FOR DEFENDANT, AMERICAN BANK AND TRUST COMPANY, AN OKLAHOMA BANKING CORPORATION, A/K/A AMERICAN BANK & TRUST CO. OF TULSA, OKLAHOMA, A/K/A AMERICAN BANK & TRUST CO.

LOEFFLER, ALLEN & HAM

By: _____
Sam T. Allen, IV, OBA #
P.O. Box 230
Sapulpa, Oklahoma 74067

ATTORNEYS FOR PLAINTIFF, RAYMOND E. CESMAT

0002418.004-44

WALKER, WALKER & DRISKILL

By: _____

Russell James Walker, OBA #9293
950 Landmark Towers East
3535 Northwest 58th Street
Oklahoma City, Oklahoma 73112
(405) 943-9693

ATTORNEYS FOR DEFENDANTS, MICHAEL'S RANCH, A NEVADA LIMITED PARTNERSHIP, A. LEROY FOSTER AND A. S. DENNISON

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JOYCE SWAFFORD, et al.,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

Case No. 90-C-990-B

ORDER

This matter comes on consideration upon the Motion for Summary Judgment filed by the Defendant, the United States of America, against the Plaintiffs, Joyce Swafford, and her husband, James Swafford. Ms. Swafford initiated this action to seek redress for intentional infliction of emotional harm allegedly caused by her sexual harassment by William Thomas, a fellow employee at the United States Post Office. James Swafford is suing for a loss of consortium of his wife. Plaintiffs claim that the Federal Tort Claims Act ("FTCA") is the proper channel for their alleged injuries. The defense claims that the Federal Employees Compensation Act ("FECA") is Plaintiffs' exclusive remedy for all work related injuries, and they are therefore barred from pursuing any other remedy. 5 U.S.C.A. § 8116(c). In the alternative, the defense pleads that Title VII of the Civil Rights Act ("Title VII") is the exclusive, preemptive remedy for sexual harassment. 42 U.S.C. § 2000e, et seq.

Ms. Swafford filed a claim with Equal Employment Opportunity ("EEO") Counselor, Linda Daniels, on or about November 16, 1988,

alleging sexual harassment by Mr. Thomas. Ms. Daniels treated the report as an informal complaint, and set up an interview with Ms. Swafford for January 19, 1989. Ms. Swafford did not appear at the interview, and took no further action to pursue her EEO claim. On November 30, 1988, Ms. Swafford filed a claim under FECA which was denied by the Department of Labor ("DOL") on the basis that the evidence submitted by her was not sufficient to establish that her emotional condition and disability were causally related to her federal employment. This action followed on November 20, 1990. On December 17, 1990, Ms. Swafford's request for reconsideration of the decision was denied by the DOL; however, on October 29, 1991, the DOL reversed its order, and directed payments to Swafford.

The Swaffords claim that FECA compensates for only physical injury, and they are therefore free to pursue emotional distress claims under the FTCA. Plaintiffs rely on the court's analysis in Underwood v. U.S. Postal Service, 742 F. Supp. 968, 970 (M.D.Tenn.1990), (citing Sullivan v. U.S., 428 F. Supp. 79, 81 (E.D.Wis.1977)), when it stated that the type of injuries covered by FECA did not "appear to include such claims as ... for discrimination, mental distress, or loss of employment."

The defense claims that FECA does, in fact, compensate for emotional distress, evidenced both by the DOL's recent decision to direct payment to Ms. Swafford, and the court's decision in Castro v. U.S. Postal Service, 757 F. Supp. 1149 (W.D. Wash.1991), in which emotional distress claims were compensated under FECA. The court in Castro stated that "there is not a sharp distinction

between physical and emotional harm for purposes of determining FECA coverage." Id. at 1150. Therefore, the defense claims, FECA's exclusive liability provision prevents Plaintiffs from seeking any other remedy. 5 U.S.C. § 8116(c).

The Court need not address at this time the variables that affect the ability to bring emotional distress charges under either FECA or the FTCA, because the Court agrees with the defense that the proper channel for all claims related to sexual harassment is Title VII. Title VII forbids discrimination based on race, color, religion, sex, or national origin in the federal workplace. 42 U.S.C. § 2000e-16. Further, sexual harassment has been considered sex discrimination since 1977. Otto v. Heckler, 781 F. 2d 754, 756 (9th Cir. 1986) (citing Barnes v. Costle, 561 F. 2d 983, 989 (D.C.Cir.1977)). Because Title VII "provides the exclusive judicial remedy for claims of discrimination in the federal workplace," Plaintiffs' claims were properly redressable under that statute alone. Brown V. GSA, 425 U.S. 820, 835, 96 S.Ct. 1961, 1969, 48L.Ed.2d 402(1976).

The proper filing of a Title VII claim originates with the EEOC, because administrative remedies must be exhausted before a federal lawsuit can be filed. Babcock v. Frank, 729 F. Supp. 279, 284 (S.D.N.Y. 1990) (citing Stewart v. United States I.N.S., 762 F. 2d 193, 197 (2nd Cir. 1985)). The party must first submit their charge to the agency EEOC counselor within 30 days of the action complained of. 29 C.F.R. § 1613.214(a)(i) (1987). The EEOC, insofar as practicable, then has 21 days to complete the final

interview. 29 C.F.R. § 1613.213(a) (1987). If the EEOC denies the claim and issues a right to sue letter ("RTS"), the plaintiff then has 30 days to file. Babcock, 729 F. Supp. at 285. Failure to file within this time frame is a jurisdictional bar to suit. Id.

By not appearing at the EEOC interview, Ms. Swafford failed to exhaust her administrative remedies in a timely manner, and Plaintiffs are therefore barred from bringing a Title VII action. Because Title VII is the only proper remedy for claims against federal employees resulting from sexual harassment, Plaintiffs are also prevented from pursuing their claims under the FTCA. Accordingly, Defendant's Motion for Summary Judgment should be and the same is hereby SUSTAINED.

IT IS SO ORDERED this 24 day of February, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. GARRY G. HILL; STACEY L. HILL a/k/a STACY L. HILL; GLENN D. HILL; LOIS M. HILL; ARKANSAS STATE BANK; COUNTY TREASURER, Delaware County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Delaware County, Oklahoma, Defendants.	)	FILED FEB 24 1992 Richard M. Lawrence, Clerk U.S. DISTRICT COURT CIVIL ACTION NO. 91-C-953-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 24th day of Feb, 1992. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Wyn Dee Baker, Assistant United States Attorney; the Defendants, County Treasurer and Board of County Commissioners, appear by Wes E. Combs, Assistant District Attorney; and the Defendants, Garry G. Hill, Stacey L. Hill a/k/a Stacy L. Hill, Glenn D. Hill, Lois M. Hill, and Arkansas State Bank, appear not, but make default.

The Court, being fully advised and having examined the court file, finds that the Defendant, Garry G. Hill, acknowledged receipt of Summons and Complaint on December 29, 1991; that Defendant, Stacey L. Hill a/k/a Stacy L. Hill acknowledged receipt of Summons and Complaint on December 29, 1991; that Defendant, Glenn D. Hill, acknowledged receipt of Summons and Complaint on December 24, 1991; that Defendant, Lois M. Hill,

acknowledged receipt of Summons and Complaint on December 24, 1991; that Defendant, Arkansas State Bank, acknowledged receipt of Summons and Complaint on December 16, 1991; that Defendant, County Treasurer, Delaware County, Oklahoma, acknowledged receipt of Summons and Complaint on December 16, 1991; and that Defendant, Board of County Commissioners, Delaware County, Oklahoma, acknowledged receipt of Summons and Complaint on December 20, 1991.

It appears that the Defendants, County Treasurer and Board of County Commissioners, filed their Answer on December 19, 1991 and their Amended Answer on February 13, 1992; and that the Defendants, Garry G. Hill, Stacey L. Hill a/k/a Stacy L. Hill, Glenn D. Hill, Lois M. Hill, and Arkansas State Bank, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Delaware County, Oklahoma, within the Northern Judicial District of Oklahoma:

> S 1/2 NW 1/4; and NE 1/4 SW 1/4; and W 1/2 SW 1/4 of Section 36, Township 20 North, Range 22 East, containing 200 acres, more or less, Delaware County, Oklahoma.

The Court further finds that on May 29, 1979, the Defendant, Garry G. Hill, executed and delivered to the United States of America, acting through the Farmers Home Administration, his promissory note in the amount of $72,200.00,

payable in yearly installments, with interest thereon at the rate of 3 percent (3%) per annum.

The Court further finds that on July 25, 1984, the Defendants, Garry G. Hill and Stacey L. Hill a/k/a Stacy L. Hill, executed and delivered to the United States of America, acting through the Farmers Home Administration, their reamortized promissory note in the amount of $73,795.07, payable in yearly installments, with interest thereon at the rate of 5 percent (5%) per annum.

The Court further finds that as security for the payment of the above-described notes, the Defendant, Garry G. Hill, executed and delivered to the United States of America, acting through the Farmers Home Administration, a real estate mortgage dated May 29, 1979, covering the above-described property. Said mortgage was recorded on May 29, 1979, in Book 388, Page 321, in the records of Delaware County, Oklahoma.

The Court further finds that on August 1, 1978, the Defendant, Garry G. Hill, executed and delivered to the United States of America, acting through the Farmers Home Administration, his promissory note in the amount of $24,300.00, payable in yearly installments, with interest thereon at the rate of 8 percent (8%) per annum.

The Court further finds that on July 25, 1984, the Defendants, Garry G. Hill and Stacey L. Hill a/k/a Stacy L. Hill, executed and delivered to the United States of America, acting through the Farmers Home Administration, their rescheduled promissory note in the amount of $8,720.65, payable in yearly

installments, with interest thereon at the rate of 8 percent (8%) per annum.

The Court further finds that the above notes are also secured by the following security documents:

Type	Date	Filed	County	File #	Exhibit
Fin. Stmt.	8-01-78	8-01-78	Delaware	6327	"F"
Fin. Stmt.	8-04-78	8-04-78	Oklahoma	242590	"G"
Fin. Stmt.	2-12-80	2-12-80	Benton	59476	"H"
Con. Stmt.	4-15-83	4-15-83	Delaware	3187	"I"
Con. Stmt.	5-09-83	5-09-83	Oklahoma	41174	"J"
Con. Stmt.	9-20-84	9-20-84	Benton	78705	"K"
Con. Stmt.	4-27-88	4-27-88	Oklahoma	25333	"L"
Con. Stmt.	4-27-88	4-27-88	Delaware	1627	"M"
Sec. Agree.	8-01-78				"N"
Sec. Agree.	10-30-79				"O"
Sec. Agree.	1-17-80				"P"
Sec. Agree.	4-07-81				"Q"
Sec. Agree.	11-18-81				"R"
Sec. Agree.	11-19-82				"S"
Sec. Agree.	3-28-84				"T"

The Court further finds that chattels that are security are listed below:

Quantity	Description	Market Value
1	1960 Minneapolis Tractor	$200.00
1	1947 Dodge Truck	100.00
1	1971 International Disc	50.00
1	1960 John Deere Disc	50.00
1	Jeffery Chisel Plow	75.00

The Court further finds that the Defendants, Garry G. Hill and Stacey L. Hill a/k/a Stacy L. Hill, made default under the terms of the aforesaid notes, mortgage, financing statements, continuation statements and security agreements by reason of their failure to make the yearly installments due thereon, which default has continued, and that by reason thereof the Defendants, Garry G. Hill and Stacey L. Hill a/k/a Stacy L. Hill, are

indebted to the Plaintiff in the principal sum of $76,464.21, plus accrued interest in the amount of $23,241.11 as of August 31, 1990, plus interest accruing thereafter at the rate of $10.6676 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of $28.00 ($20.00 docket fees, $8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Delaware County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of $194.94 plus penalties and interest. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, Garry G. Hill, Stacey L. Hill a/k/a Stacy L. Hill, Glenn D. Hill, Lois M. Hill, and Arkansas State Bank, are in default and have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Garry G. Hill and Stacey L. Hill a/k/a Stacy L. Hill, in the principal sum of $76,464.21, plus accrued interest in the amount of $23,241.11 as of August 31, 1990, plus interest accruing thereafter at the rate of $10.6676 per day until judgment, plus interest thereafter at the current legal rate of 4.21 percent per annum until paid, plus the costs of this action in the amount of $28.00 ($20.00 docket fees, $8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced

or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Delaware County, Oklahoma, have and recover judgment in the amount of $194.94, plus penalties and interest for ad valorem taxes, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Garry G. Hill, Stacey L. Hill a/k/a Stacy L. Hill, Glenn D. Hill, Lois M. Hill, and Arkansas State Bank, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Garry G. Hill and Stacey L. Hill a/k/a Stacy L. Hill, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, according to Plaintiff's election with or without appraisement, the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of Defendants, County Treasurer and Board of County Commissioners, Delaware County, Oklahoma, in the amount of $194.94, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

WYN DEE BAKER, OBA #465
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

Judgment of Foreclosure
Civil Action No. 91-C-953-E

WDB/esr

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT
OF OKLAHOMA, TULSA DIVISION

U. S. AIR PARTS, INC.,
an Oklahoma corporation,

and
WESTERN AERO SUPPLY CORPORATION,
a Texas corporation,

Plaintiffs,

v.

TELEDYNE INDUSTRIES, INC., d/b/a
Teladyne Continental Aircraft
Products Division,
a California corporation,

and

AVIALL, INC.,
a Delaware corporation,

and

AVIALL OF TEXAS, INC.,
a Delaware corporation,
RYDER SYSTEMS, INC.,

Defendants.

No. 91 C 0100E

FILED

FEB 24 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

ORDER GRANTING APPLICATION FOR A DISMISSAL WITH PREJUDICE

Upon written application of the Plaintiffs and Aviall, Inc., Aviall of Texas, Inc. (Ryder Aviall, Inc.) and Ryder System, Inc. (the Aviall Defendants) for an order of dismissal with prejudice of the Complaint, as amended, and all causes of action against these Aviall defendants, the Court having examined said application, and having been fully advised in the premises finds that said application should be granted. It is therefore,

ECD/02-92321A/jfb

ORDERED, ADJUDGED AND DECREED by the Court that the Complaint, as amended, and all causes of action of the Plaintiff against Aviall, Inc., Aviall of Texas, Inc. (Ryder Aviall, Inc.) and Ryder System, Inc. be and the same are hereby dismissed with prejudice to any further action.

DATED this 24th day of Feb, 1992.

S/ JAMES O. ELLISON

Judge, United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SONNY BUZZARD, GARY FORREST, DAN HAYES, DAYTON HOLT, AUSTIN KETCHER, ROGER LIMORE, NORMAN LITTLEDAVE, BOBBY MAYFIELD, DIANNA MAYFIELD, ADALENE SMITH, ROBERTA SMOKE, CAROL STACY, PEGGY STEPP, MARY STIGLETS, TABBIE HESS, J. L. BARNETT, Smokeshop Managers and Licensees; THE UNITED KEETOOWAH SMOKESHOP ASSOCIATION, an unincorporated Indian Organization, THE UNITED KEETOOWAH BAND OF CHEROKEE INDIANS OF OKLAHOMA,

Plaintiffs,

v.

THE OKLAHOMA TAX COMMISSION; ROBERT ANDERSON, Chairman of the Tax Commission, ROBERT L. WADLEY, Vice Chairman of the Tax Commission; and DON KILPATRICK, Secretary of the Tax Commission; JON D. DOUTHITT, District Attorney for Delaware and Ottawa Counties, Oklahoma; JIM EARP, Sheriff for Delaware County, Oklahoma; GERALD HUNTER, District Attorney for Adair, Cherokee, Wagoner, and Sequoyah Counties, Oklahoma; W. A. "DREW" EDMONDSON, District Attorney for Muskogee County, Oklahoma; PATRICK R. ABITOL, District Attorney for Rogers, Mayes, and Craig Counties, Oklahoma; and their successors in office,

Defendants.

FILED

FEB 24 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

No. 90-C-848-B

O R D E R

Before the Court for decision are the Motions for Summary Judgment filed by the Defendants Oklahoma Tax Commission ("OTC"), its named officers, and the Defendants Oklahoma District Attorneys

Douthitt, Hunter, Edmondson and Abitol,[1] as well as motion for summary judgment filed by the plaintiff, the United Keetoowah Band of Cherokee Indians ("UKB").

This suit was brought by the United Keetoowah Smokeshop Association ("UKSA"), an unincorporated Indian organization, individual smokeshop managers and licensees, and the UKB. In its Order of May 2, 1991, the Court sustained the defendants' motions to dismiss the individual plaintiffs and the UKSA. The UKB, therefore, is the only remaining plaintiff in this case. In bringing this suit, the UKB seeks injunctive relief prohibiting the enforcement of Oklahoma's tobacco taxing statutes in smokeshops allegedly owned and licensed by the UKB and located within the boundaries of the original Cherokee Indian Reservation.

The Keetoowah Society of Oklahoma Cherokees had existed within the original Cherokee Tribe of Oklahoma since the 1800s as an "organization of full-bloods dedicated to preservation of Indian culture and traditions. It represented the most conservative portion of the Cherokee Indians, and had several specific objectives, including opposition to slavery and subsequent opposition to allotment." (PX-AK, Briefing Paper for Deputy Ass't Secretary).[2] When the Keetoowahs later sought recognition by

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[1] Upon motion of the plaintiffs,the Court dismissed Jim Earp, Sheriff for Delaware County, Oklahoma, on February 11, 1991.

[2] The exhibits designated "PX" reference plaintiff's exhibits A through AX in support of plaintiff's motion for preliminary injunctive relief, in opposition to defendant's motion to dismiss as converted to motion for summary judgment and plaintiff's cross motion for summary judgment. (Docket #59).

Congress in order to organize as a separate band under the Oklahoma Indian Welfare Act, 25 U.S.C. §503 ("OIWA"), Congress enacted the Act of August 10, 1946 which stated "[t]hat the Keetoowah Indians of the Cherokee Nation of Oklahoma shall be recognized as a band of Indians residing in Oklahoma within the meaning of section 3 of the Act of June 26, 1936." (PX-B). In 1950 the UKB organized under the OIWA, adopting a constitution and by-laws, as well as a Corporate Charter. (PX-L and PX-M).

Another descendant of the old Cherokee tribe is the Cherokee Nation. The Cherokee Nation did not avail itself of the right to organize under the OIWA; however, in 1976 the Cherokee Nation adopted a new constitution, its current governing document, which was approved by the Commissioner of Indian Affairs.

Historically, the Bureau of Indian Affairs and the Department of the Interior have recognized the Cherokee Nation as the primary Cherokee tribe. Because the Department of the Interior has determined that the population of the UKB is included in the population base of the Cherokee Nation, the Secretary has designated the Cherokee Nation as the proper recipient of grants and contracts applied for under Public Law 93-638 until the UKB establishes a "tribal roll to identify its service population, separate and apart from the Cherokee Nation." (PX-AM). Furthermore, the Secretary has refused to take any lands within the boundaries of the original Cherokee Indian Reservation into trust for the UKB without the consent of the Cherokee Nation, and the Cherokee Nation has refused to grant its consent. (PX-AP). It is this compendium of

events from which the present controversy arises.

The parties agree that the only issue before the Court is whether the subject smokeshops are located in Indian country. The resolution of this issue determines whether the UKB is required to collect and remit state taxes on sales of tobacco to non-tribal members. In Oklahoma Tax Commission v. Citizen Band Potawatomi Tribe of Oklahoma, ___U.S.___, 111 S.Ct. 905 (1991), the Supreme Court reaffirmed the doctrine of tribal sovereign immunity when the Court held that the State of Oklahoma could not impose sales tax on cigarette sales to non-tribal members in a tribal owned convenience store located on land held by the federal government in trust for the tribe. However, the Court also reiterated its decisions in Moe v. Confederated Salish and Kootenai Tribes, 425 U.S. 463 (1976) and Washington v. Confederated Tribes of Colville, 447 U.S. 134 (1980) that Indian retailers in Indian country may be required to collect all applicable state taxes on sales to non-tribal members. Therefore, if the subject smokeshops are not located in Indian country, the OTC may assess taxes on tobacco sales to tribal members and non-members alike.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Windon Third Oil & Gas v. FDIC, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

> The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

The UKB states that the following are controverted facts:

> 1. That the land in question upon which the United Keetoowah Band of Cherokee Indians in Oklahoma have located their smoke shops is restricted against alienation and, therefore, Indian Country.
> 2. There has been no express legislation disestablishing the boundaries of the old Cherokee Reservation in Oklahoma.

(UKB's Reply Brief, Statement of Controverted Facts) (exhibits omitted). The Court, however, finds that these are matters of law, not issues of fact, and concludes that there are no genuine issues of material fact which would preclude summary judgment.

The term "Indian country" is defined by statute as

> (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-

of-way running through the same.

18 U.S.C. §1151. While this statute is included in the federal criminal code governing applicable federal criminal law in Indian country, the Supreme Court has held that the statute's definition of Indian country also applies to issues of federal civil and tribal jurisdiction. California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1986); DeCocteau v. District County Court, 420 U.S. 425, 427 n.2 (1975).

The statutory definition of Indian country has been expanded through judicial decision to include land held in trust by the federal government for the benefit of Indian tribes. The Supreme Court recently revisited this broader definition in Oklahoma Tax Comm'n v. Potawatomi Indian Tribe, ___U.S.___, 111 S.Ct. 905 (1991), in which the Court found that land held in trust for the Potawatomis was Indian country:

> In *United States v. John*, 437 U.S. 634, 98 S.Ct. 2541, 57 L.Ed.2d 489 (1978), we stated that the test for determining whether land is Indian country does not turn upon whether the land is denominated "trust land" or "reservation." Rather, we ask whether the area has been "validly set apart for the use of the Indians as such, under the superintendence of the Government."

Id. at 910. See also Cheyenne-Arapaho Tribes v. State of Oklahoma, 618 F.2d 665, 667-68 (10th Cir. 1980).

The UKB does not claim that any of the smokeshop sites are located within dependent Indian communities or on Indian

allotments[3] or trust land. The UKB instead argues that it is entitled to exercise tribal sovereignty over the subject lands because (1) they are reservation lands, and the UKB is heir to these unallotted lands within the limits of the original Cherokee Indian Reservation;[4] and (2) these lands, while held by the UKB in fee, are similar to "trust lands," as they are subject to restrictions imposed by 25 U.S.C. §177 and the Charter of the UKB.

(1) The UKB, in essence, argues that the smokeshops sites which are unallotted lands located within the boundaries of the original Cherokee Indian Reservation transform into Indian country upon the UKB's purchase in fee. The UKB reaches this conclusion reasoning that a) it is one of the bands of Cherokee Indians for whom the original Cherokee Indian Reservation was established; b) the original Cherokee Indian Reservation has never been

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[3] Although there is some evidence in the record that the smokeshop operated by Roberta Smoke, a former plaintiff in this case, is located on an Indian allotment (Defendant District Attorneys' Brief, Affidavit of Margrett Kelly, Exh.2), the UKB does not claim that any of the subject smokeshops sites are Indian allotments.

[4] The original Cherokee Indian Reservation was established by several federal treaties including the Treaties of May 6, 1828, 7 Stat. 311, and New Echota of December 29, 1835, 7 Stat. 478, as clarified and/or modified by the Treaty of August 6, 1846, 9 Stat. 871. These reservation lands were later subject to allotment pursuant to the Act of March 1, 1901, 31 Stat. 848, the Act of July 1, 1902, 32 Stat. 716, and the Act of April 26, 1906, 34 Stat. 137. Lands not allotted to the members of the Cherokee tribe or reserved for the use of the tribe as town, church or school sites, were sold on the open market "and the proceeds of such sales deposited in the United States Treasury to the credit of the [Cherokee tribe]." Section 16 of the Act of April 26, 1906, 34 Stat. 137.

The UKB, in effect, claims that the unallotted land within the boundaries of the original Cherokee Indian Reservation which it has purchased in fee is reservation land.

disestablished; c) Congress recognized the UKB by the Act of August 10, 1946, 60 Stat. 976; and d) the UKB's corporate Charter and By-Laws, issued by the Secretary of the Interior pursuant to Section 3 of the OIWA, 25 U.S.C. §503, recognize the UKB's rights to the original Cherokee Indian Reservation.

The UKB, however, offers no authority to support its claim that it is heir to the original Cherokee Indian Reservation. The Act of August 10, 1946 simply recognizes the UKB as a "band of Indians residing in Oklahoma"; it does not set aside a reservation for the UKB or acknowledge the UKB's jurisdiction over the original Cherokee Indian Reservation. Also, while the Act's recognition of the UKB permitted the UKB to incorporate under Section 3 of the OIWA, nothing in Section 3 creates or recognizes the UKB's claim to the original Cherokee Indian Reservation. Neither does the UKB's Corporate Charter, Constitution or By-Laws grant the UKB jurisdiction over the reservation lands.[5]

Contrary to the UKB's claim, the Secretary of the Interior has determined that the lands within the original Cherokee Indian Reservation are not under the jurisdiction of the UKB:

> The first issue to be addressed is whether the United Keetoowah Band has a reservation as that term is used in the land acquisition regulations. [25 C.F.R. §151.8] We believe it is clear that they do not. The regulations

[5] Section 7 of the Corporate Charter states that "[t]he Band ownership of unallotted lands, whether or not occupied by particular individuals, is hereby expressly recognized." This section, however, merely recognizes UKB's corporate right to own unallotted lands, not its right to assume jurisdiction over the unallotted lands within the boundaries of the original Cherokee Indian Reservation.

> define the term "Indian reservation", in the State of Oklahoma, "as that area of land constituting the former reservation of the tribe as defined by the Secretary." 25 CFR 151.2(f). The United Keetoowah Band has never had a reservation in Oklahoma, and the Band has never exercised independent governing authority over any of the Cherokee Nation's reservations lands. . . . While the [Act of August 10, 1946] recognized the society as a Band for the purposes of organizing under the Oklahoma Indian Welfare Act, it did not create or set aside a reservation for the Band. Neither did it purport to give the newly acknowledged Band any authority to assert jurisdiction over any lands belonging to the Cherokee Nation.

(Defendants District Attorneys' Brief in Support of Motion for Summary Judgment, Exhibit 4). Furthermore, as this Court noted in The United Keetoowah Band of Cherokee Indians in Oklahoma v. Secretary of the Dept. of Interior, No. 90-C-608-B (May 31, 1991), the Secretary has recognized that the original Cherokee Indian Reservation is the former reservation of the Cherokee Nation, not the UKB, thereby necessitating the UKB's procurement of the Cherokee Nation's consent before the Secretary will acquire any such land in trust for the UKB pursuant to 25 U.S.C. §465. *See* 25 C.F.R. §151.8.

The Court, therefore, concludes that UKB has failed to show any treaty or Congressional act establishing UKB's "inherited" right or claim to reservation land within the boundaries of the old Cherokee Indian Reservation.[6]

[6] In so holding, the Court need not reach the issue of whether or not the original Cherokee Indian Reservation has been terminated or disestablished.

(2) The UKB also argues that because the subject lands owned by the UKB are restricted against alienation by direct action by Congress in enacting 25 U.S.C. §177 which prohibits the "purchase, grant, lease, or other conveyance of [tribal] lands, or of any title or claims thereto" without congressional authorization, and by the Secretary of Interior through the limitations in the Corporate Charter issued to the UKB pursuant to the OIWA, 25 U.S.C. §503, such land is similar to "trust status" land and therefore should be designated Indian country.

The UKB contends that under 25 U.S.C. §177 the UKB must obtain consent of the federal government before the UKB can alienate any of the land it has purchased in fee simple. [7]

The UKB further urges that it is restrained from alienating its land due to the limitation on its power as set forth in the Corporate Charter issued by the Secretary of the Interior. The UKB's power to buy and sell real property is set out in section 3 of the UKB's Corporate Charter:

> The United Keetoowah Band of Cherokee Indians in Oklahoma, subject to any restrictions contained in the Constitution and laws of the

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[7] Section 177, title 25 of the United States Code, is the codification of the Indian Non-Intercourse Acts of 1790 and 1834. In enacting this statute, the Congress was acting in *parens patriae* to protect the tribes from "the practice of state authorized Indian land cessions that had flourished under the Articles of Confederation and during the prior colonial experience." F. Cohen, Handbook of Federal Indian Law 511 (1982); Federal Power Comm'n v. Tuscarora Indian Nation, 362 U.S. 99, 119 (1960) ("The obvious purpose of that statute is to prevent unfair, improvident or improper disposition by Indians of lands owned or possessed by them to other parties, except the United States, without the consent of Congress. . .").

> United States or in the Constitution and Bylaws of the Band, and subject to the limitations of sections 4 and 5 of this Charter, shall have the following corporate powers as provided by section 3 of the Oklahoma Indian Welfare Act. . .
> (*r*) To purchase, take by gift, bequest, or otherwise own, hold, manage, operate, and dispose of property of every description, real or personal.

However, under section 4 of the Corporate Charter, this power is limited: "No land belong [sic] to the Band or interest in land shall ever be sold or mortgaged." The Corporate Charter also incorporates the statutory requirement of an act of Congress to revoke or surrender the charter.

The Cherokee Nation, appearing as amicus curiae, claims that §177 does not impose restraints on the alienation of the UKB's land because the congressional approval required by §177 has been granted through the enactment of §17 of the IRA, 25 U.S.C. §477, which authorizes Indian tribes organized under the IRA "to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real or personal." The Cherokee Nation argues that because the Secretary of the Interior issued the UKB's Corporate Charter pursuant to §3 of the OIWA, 25 U.S.C. §503, and §17 of the IRA, 25 U.S.C. §477, any restraint imposed by §177 has been removed by Congress.

The defendants also urge that the restraint on alienation in section 4 of the Corporate Charter is self-imposed and does not by itself transform fee simple land to trust land. To so find, they

argue, would eviscerate the federal government's power to acquire trust land. Land acquisitions in trust are governed by federal regulations in 25 C.F.R. §151. Section 151.10 sets forth seven factors to be considered by the Secretary of the Interior in evaluating requests for acquisitions of land in trust status:

> (a) The existence of statutory authority for the acquisition and any limitations contained in such authority;
> (b) The need of the individual Indian or the tribe for additional land;
> (c) The purposes for which the land will be used;
> (d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs;
> (e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;
> (f) Jurisdictional problems and potential conflicts of land use which may arise; and
> (g) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

The defendants argue that if the UKB can create trust land simply by acquiring land in fee simple, the Department of the Interior would not have the power to deny trust status if its consideration of the above factors so counseled.

The Court finds the defendants' argument persuasive. The UKB has the power to purchase land in fee without approval from the federal government. The regulations concerning trust acquisitions, contrarily, vest power in the Secretary of the Interior to determine which land will become trust land and thus, Indian

country. The copies of the deeds to the subject tracts reflect that the lands were granted to the "United Keetoowah Band of Cherokee Indians in Oklahoma," and not to the "United States of America in trust for the United Keetoowah Band of Cherokee Indians in Oklahoma." (attached to Defendant OTC's Brief in support of Motion for Summary Judgment). The Court can only conclude from the record before it that the smokeshop sites at the time of the UKB's purchase had lost any restricted status they may have once had and were therefore subject to state jurisdiction. Furthermore, the UKB has failed to cite any action by the federal government after the UKB's purchase by which the federal government assumed jurisdiction over the subject sites, removing the lands from the jurisdiction of the state. While the Court acknowledges that the UKB is restricted from alienating its fee land, the Court cannot conclude from this that the subject lands are Indian country; that is, that they have been "validly set apart for the use of the Indians as [trust land or reservation] under the superintendence of the government." Potawatomi, 111 S.Ct. at 910. The UKB's power to purchase land in fee under its Corporate Charter is not synonymous with the federal government's setting aside land for the use of the UKB, nor does the government's approval before the land can be sold, if any is required, by itself rise to the level of government "superintendence." The Court, therefore, concludes that the restraint on alienation of the UKB's fee land does not create Indian country.

In accordance with the above, the Court holds that the subject

smokeshops owned and operated by the UKB are not in Indian country, and are therefore subject to the taxing authority of the State of Oklahoma.[8] The Court, therefore, sustains the motions for summary judgment filed by the defendants and overrules the motion for summary judgment filed by the UKB.

DATED this 24th day of February, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

[8] In so holding, the Court is not unsympathetic to the plight of the UKB or ignorant of the potential effect of such a ruling on the tribe's self-determination and economic development. The UKB is in the untenable position of being a recognized Indian tribe without land over which to assert tribal sovereignty: the Department of the Interior refuses to acquire UKB's land in trust without the consent of the Cherokee Nation and the Cherokee Nation refuses to grant its consent. Consequently, the dispute is founded in the power struggle between the two tribes of Cherokee Indians. Furthermore, as this Court concluded in The United Keetoowah Band of Cherokee Indians in Oklahoma v. Secretary of the Dept. of Interior, No. 90-C-608-B (May 31, 1991), the UKB cannot bring suit against the Secretary to compel trust acquisition of its land without the Cherokee Nation's consent to waive its sovereign immunity, as the Cherokee Nation is an indispensable party under Fed.R.Civ.P. 19. Under the present state of the law, it appears that the UKB's only remedy is a political one.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OKLAHOMA

Adair State Bank,

Plaintiff,

vs.

American Casualty Company of Reading, Pennsylvania,

Defendant.

No. 87-C-45-E

STIPULATION AND ORDER FOR DISMISSAL

WHEREAS, the district court entered judgment in favor of plaintiff on November 1, 1989 and the district court issued an order dated June 18, 1990 awarding plaintiff attorney fees;

WHEREAS, defendant appealed said judgment and said order to the Tenth Circuit Court of Appeals;

WHEREAS, the Tenth Circuit Court of Appeals affirmed said judgment but reversed said order and remanded the matter to the district court for further proceedings on the issue of attorney fees;

WHEREAS, defendant has paid said judgment; and

WHEREAS, defendant and plaintiff have fully compromised all remaining issues, including the issue of attorney fees.

NOW, THEREFORE, it is stipulated and agreed, by and between the parties hereto, through their respective counsel, that the above-entitled action may be and hereby is

dismissed with prejudice and on the merits, but without further costs to any of the parties.

IT IS FURTHER STIPULATED AND AGREED, that either party, without notice to the other, may cause judgment of dismissal with prejudice and on the merits to be entered herein.

MEAGHER & GEER

Dated: 2/4/92

By _____

Charles M. Becker
Thomas H. Crouch
4200 Multifoods Tower
33 South Sixth Street
Minneapolis, MN 55402
Telephone: (612) 338-0661

and

SECREST & HILL

Michael Hill
7134 South Yale Street
Suite 900
Tulsa, OK 74136
Telephone: (918) 494-5905

Attorneys for American Casualty Company of Reading, Pennsylvania

EDMONDS, COLE, HARGRAVE, GIVENS & WITZKE

Dated: Feb. 5, 1992

By _____
David W. Edmonds
Brian Husted
One North Hudson, Suite 200
Oklahoma City, OK 73102

RAMEY & NELSON

Dated: Feb. 5, 1992

By _____
Robert Nelson
3 South Fifth Street
Yukon, OK 73009

ORDER

UPON THIS FOREGOING STIPULATION,

IT IS HEREBY ORDERED that judgment of dismissal with prejudice and on the merits, without cost to either party, be entered in the above-entitled action.

Dated: 2/20/92

S/ JAMES O. ELLISON

JUDGE OF DISTRICT COURT

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